# CEPEJ Guidelines

European Commission for the efficiency of justice
(CEPEJ)

cepej

European Commission for the Efficiency of Justice

Commission européenne pour l'efficacité de la justice

COUNCIL OF EUROPE

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**EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ)**

# CEPEJ Guidelines

## Guidelines in the field of efficiency of justice



## Guidelines in the field of quality of justice



### Guidelines to promote the instruments of the Council of Europe on justice

- **Mediation**



- **Enforcement**

# CEPEJ guidelines on judicial statistics (GOJUST)

## FOREWORD

Article 2 of its statutes[1] instructs the CEPEJ to "examine the results achieved by the different systems (…) by using (…) common statistical criteria and means of evaluation". Article 3 states that the CEPEJ is to fulfil its tasks "by (…) defining measures and means of evaluation" and "drawing up (…) best practice surveys, guidelines, action plans, opinions and general comments".

The action plan which the Heads of State and Government adopted at their 3rd summit (Warsaw, May 2005) included a decision "to develop the evaluation (…) functions [of the CEPEJ]".

The CEPEJ report "European judicial systems – Edition 2008" (published in October 2008) was well received by public decision makers and the judicial community in Europe.

The CEPEJ thought it helpful to provide guidelines for the bodies which collect and process statistics in the justice field. The guidelines draw on the experience acquired in the pilot evaluation of judicial systems (2002-2004) and the two first regular evaluation cycles (2004-2006 and 2006 - 2008). In particular they take into account observations and proposals from national correspondents and the comments made by the CEPEJ.

These guidelines must be seen and used as an element of the corpus of tools designed by the CEPEJ to strengthen the efficiency and quality of justice, and in particular the Time Management Checklist[2], the Checklist for promoting the quality of justice and the courts[3] and the SATURN Guidelines on judicial time management[4], as well as the peer evaluation process and judicial statistics that has been implemented since 2008.

The aims of the guidelines are to:

- promote quality, transparency, accountability and accessibility of judicial statistics collected and processed in the member states, as a tool for public policy;
- facilitate comparison of data on European countries by ensuring adequate compatibility of key judicial indicators despite the substantial differences between countries (as regards judicial organisation, the economic situation, demography, etc.) so as to understand how the judicial systems function, identify common indicators for measuring activity and evaluating operation of the judicial system, bring out the major tendencies, identify difficulties and provide guidance for the public policies of justice in order to improve their efficiency and quality for the benefit of the European citizens;
- contribute to ensure the transparency and accountability of the CEPEJ process for evaluating European judicial systems and to improve this process.

## GUIDELINES

### I. General principles

1. The main aim of judicial statistics is to facilitate the efficient functioning of a judicial system and contribute to the steering of public policies of justice. Therefore judicial statistics should enable policy makers and judicial practitioners to get relevant information on court performance and quality of the judicial system, namely the workload of courts and judges, the necessary duration for handling this workload, the quality of courts' outputs and the amount of human and financial resources to be allocated to the system to resolve the incoming workload.

2. All data regarding performance and quality of the judicial system should be collected and presented through a compatible and consistent methodology applicable to all the branches and bodies of the judiciary so as to be able to evaluate the efficiency of the means allocated to them.

3. Each member state should have specific statistical institutional arrangement(s) in order to collect, coordinate, aggregate and process the information from various statistic providers needed for evaluating

[1] Committee of Ministers Resolution Res(2002)12.
[2] CEPEJ(2005)12Rev.
[3] CEPEJ(2008)2.
[4] CEPEJ(2008)8.

the functioning and measuring the activity of courts, prosecution services, administrative services within the judicial system and any other bodies with a role in judicial activity.

***Procedures and mechanisms***

4. Procedures and timeframes should be agreed with the stakeholders for the establishment of a system for regular collection and dissemination of statistic information. A clear allocation of responsibilities and mechanism(s) should be established in advance for addressing general questions, managing the maintenance of the system and solving conflicts regarding the operation of the system as well as the credibility and interpretation of the data collected.

5. As far as possible, statistical data that has been collected in the past should also be used in future systems to develop time series.

6. When the competent authority distributes the resources between judicial bodies using benchmarks through statistics, a mechanism of monitoring of the proper application of the rules for collecting, processing and analysing data should be established to guarantee a fair and transparent system.

7. Requests for statistics should not unduly overload court staff but correspond to the needs of the smooth management of the overall judicial system.

8. Developing IT use in the statistic system should enable to shorten the life cycle for submitting and processing judicial data.

***Transparency and accountability of data***

9. Professionalism and ethics of the persons entrusted with data processing and their independence vis-à-vis other political or administrative bodies or organs as well as private bodies guarantee the accountability of the data. The states should ensure that these persons have the appropriate skills and should guarantee the adequate level of independence so that an accountable and high quality scientific work can be delivered.

10. All data collection and analysis should be undertaken in a transparent way. The main results should not only be delivered to all direct stakeholders of justice administration but also to all persons involved in the functioning of the judicial system. The opinions of researchers could be taken into account to improve this mechanism.

11. Data and their analysis should not be personalised. They should be presented so as to be easily comprehensible in order to contribute to the transparency and acceptance of the whole system by all the persons concerned, and guarantee the fairness in the information presented. Complex formula should be avoided as far as possible.

12. Public availability of data collected at national level should be ensured, namely through publication on Internet.

13. Appropriate steps should be taken by the bodies responsible for collecting and processing judicial statistics in the member states to ensure dialogue with the organisations representing the legal and judicial professions, researchers and, as appropriate, other organisations with an interest in the matter so as to guarantee a broad consensus on the information collected and communicated.

***Evaluation of European judicial systems***

14. Data collection should be organised taking into account as far as possible the CEPEJ Evaluation Scheme so that answers can be provided recurrently to questions put as part of the process of evaluating European judicial systems. Attention should also be paid to the guidance in the Explanatory Note so as to ensure homogeneity of the concepts considered and measurement methods used.

15. In particular each member state should make the necessary arrangements that would allow to provide annual input to the corpus of key data of justice in Europe as defined by the CEPEJ (see Appendix II).

## II. Specific principles

### *Justice budgets*

16. So that state efforts to develop the judicial system can be evaluated, statistical collection and processing should also be organised in such a way as to separate out the budgets for:
    - salaries
    - legal aid
    - computerisation (equipment, investment and maintenance),
    - justice expenses,
    - investment in new buildings,
    - building maintenance, operation and costs,
    - training and education for judges as well as for prosecutors.

17. Judicial data should be collected and processed, as far as possible, in a manner that allows the budgets for operating the courts to be distinguished from those for operating the prosecution service. If the judicial system is organised in such a way that no such differentiation is possible, figures for the number of judges and the number of prosecutors could allow weighting of the statistical results or a system enabling to estimate the budget dedicated to the prosecution system should be set up.

18. The statistical information should cover both the budgets as approved and the budgets as executed.

### *Human resources*

19. Numbers for judicial personnel (judges, prosecutors, court clerks, etc.) should as far as possible be given in full-time equivalent.

### *Court activity, procedural timeframes and evaluation*

20. The statistic system should enable both at the national level and at the court level to assess the overall length of proceedings according to a sufficiently elaborated typology of cases.

21. A large part of the cases before the European Court of Human Rights concerns the violation of the "reasonable time" of a proceeding provided for by Article 6 of the European Convention on Human Rights. Given that it is difficult to offer effective solutions for optimum and foreseeable timeframes unless we first have detailed knowledge of the situation, special attention should be paid to information collection on length of proceedings.

22. In particular, member states should be able to provide information at least on the length of proceeding for the four following cases: litigious divorces, employment dismissals, robberies, intentional homicides (as defined in the Appendix I).

23. To facilitate applying common solutions at Council of Europe level, a standard methodology should be adopted at the member state level for calculating timeframe of court case management. Member states should be in a position to calculate at least the three following ratios: clearance rate, disposition time and efficiency rate, as defined in Appendix I[5].

### *Monitoring of breaches of Article 6 of the European Convention on Human Rights*

24. Detailed up-to-date statistics in the member states on national cases before the European Court of Human Rights concerning the various rights protected by Article 6 are a key tool for evaluating and managing European Court of Human Rights judgments, in particular for the purpose of remedying situations which breach the convention. The relevant bodies of member states are accordingly invited to maintain statistics in tabular form on national cases concerning Article 6 ECHR so that Court judgments are appropriately executed and further breaches prevented.

25. Tables should, in particular, record the number of cases per year:
    - notified by the Court
    - declared inadmissible by the Court
    - ending in a friendly settlement
    - ending in a violation finding

[5] This appendix repeates the SATURN Guidelines on judicial time management: EUGMONT (CEPEJ(2008)8).

- ending in a non-violation finding

and relating at least to:

- breach of the reasonable time requirement
- non-execution of Court decisions.

26. As far as possible the tables could likewise cover other rights protected by Article 6 ECHR.

**Appendix I**

**EUROPEAN UNIFORM GUIDELINES**
**FOR MONITORING OF JUDICIAL TIMEFRAMES**
(**EUGMONT**)

## 1. General data on courts and court proceedings

System of monitoring should have available and public information on the general design of the judicial system, with special attention to the information relevant for the time management of the proceedings. The information on the general level should include accurate information on:

- the number and types of courts and their jurisdiction;
- the number and types of proceedings in the courts;
- the proceedings designated as priority (urgent) cases;

The data on judicial system should be regularly updated, and be available at least on the annual level (start/end of the calendar year). The following data on the number of proceedings in the courts should be available:

- total number of proceedings pending at the beginning of the monitored period (e.g. calendar year);
- new proceedings (proceedings initiated within the monitored period, e.g. in the calendar year);
- resolved cases (proceedings finalized within the monitored period either through a decision on the merit, a withdrawal of the case, a friendly settlement, etc…);
- total number of proceedings pending at the end of the monitored period.

The data on the finalized proceedings can be split according to the way how the proceedings ended. At least, the cases that ended by a decision on the merits should be distinguishable from the cases that ended otherwise (withdrawal of the claim, settlement, and rejection on formal grounds).

*Example I.*

**Courts of the State of Alpina**

| | Court or branch of jurisdiction | Cases pending on 1.1.2008 | New cases initiated in 2008 | Resolved cases in 2008 | Cases pending on 31.12.2008 |
|---|---|---|---|---|---|
| 1 | Court(s) A | | | | |
| 2 | Court(s) B | | | | |
| 3 | Court(s) C | | | | |
| | **TOTAL** | | | | |

**N.B: "cases pending on 31.12.2008" = "cases pending on 1.1.2008" + "new cases initiated in 2008" – "resolved cases in 2008".**

## 2. Information on types of cases

The information about the cases in the courts should be available both as the total, aggregate information, and as information divided according to the types of cases. For this purpose, some general and universal categories of cases should be utilized, such as division on civil, criminal and administrative cases.

Within the general categories, a more detailed types or groups of cases should be distinguished (e.g. labour cases; murder cases), and the same information should be available for the appropriate subtypes (e.g. employment dismissal cases within labour cases).

**At this stage, each court can use its own case category. However the following four categories are mandatory for each court: litigious divorce, dismissal, robbery and intentional homicide.**

- *Litigious divorce cases*: i.e. the dissolution of a marriage contract between two persons, by the judgement of a court of a competent jurisdiction. The data should not include: divorce ruled by an agreement between the parties concerning the separation of the spouses and all its consequences (procedure of mutual consent, even if they are processed by the court) or ruled

through an administrative procedure. If your country has a totally non-judicial procedure as regards divorce or if you can not isolate data concerning adversarial divorces, please specify it and give the subsequent explanations. Furthermore, if there are in your country, as regards divorce, compulsory mediation procedures or reflecting times, or if the conciliation phase is excluded from the judicial proceeding, please specify it and give the subsequent explanations.

- *Employment dismissal cases:* cases concerning the termination of (an) employment (contract) at the initiative of the employer (working in the private sector). It does not include dismissals of public officials, following a disciplinary procedure for instance.

- *Robbery* concerns stealing from a person with force or threat of force. If possible these figures should include: muggings (bag-snatching, armed theft, etc.) and exclude pick pocketing, extortion and blackmail (according to the definition of the European Sourcebook of Crime and Criminal Justice). The data should not include attempts.

- *Intentional homicide* is defined as the intentional killing of a person. Where possible the figures should include: assault leading to death, euthanasia, infanticide and *exclude* suicide assistance (according to the definition of the European Sourcebook of Crime and Criminal Justice). The data should not include attempts.

For the purposes of further comparison with other European systems, the precise definition and scope of the other case type used by the court (especially the non-common categories) should be appended.

*Example II.*
**City Court of Danubia**

| | Type of case | Cases pending on 1.1.2008 | New cases initiated in 2008 | Resolved cases in 2008 | Cases pending on 31.12.2008 |
|---|---|---|---|---|---|
| **1** | **Civil cases** | | | | |
| 1a | Litigious divorces | | | | |
| 1b | Dismissals | | | | |
| … | … | | | | |
| **2** | **Administrative** | | | | |
| 2a | … | | | | |
| … | | | | | |
| **3** | **Criminal cases** | | | | |
| 3a | Intentional homicides | | | | |
| 3b | Robberies | | | | |
| … | … | | | | |
| | **TOTAL** | | | | |

## 3. Information on timeframes of proceedings

*3a. Information on court-based timeframes of proceedings per duration periods and average/maximum timeframes*

Every court should collect data regarding the timeframes of proceedings that are taking place in the court. Pending and completed cases within the period (e.g. calendar year) should be separately monitored, and the data on their duration should be split in the groups according to the periods of their duration, i.e. cases pending or completed in less than one month, 1-3 months, 4-5 months, 7 to 12 months, 1-2 years, 2-3 years, 3-5 years and more than 5 years. In addition to the spread of cases according to periods of their duration, the average and mean duration of the proceedings have to be calculated, and an indication of minimum and maximum timeframes should be given as well. The time of processing should consider only the time that was needed to process the case within the particular court, i.e. the time between the moment when the case arrived to the court and the moment when the case exited the court (e.g. final decision, transfer to a higher court to be decided on appeal, etc). If possible, the information on timeframes of proceedings for the completed cases should be distinguishable for the cases completed after a full examination of the case (i.e. the cases that ended by a decision on the merits) and the cases that were completed otherwise (by withdrawal, settlement, lack of jurisdiction etc.).

*Example III:*

**City Court of Danubia**

| | *Duration of cases completed in 2008 (situation as per 31.12.2008.)* | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | **Number of resolved cases** | **Number of cases pending on at the end of the period** | **< 1 m.** | **1-3 m** | **4-6 m** | **7-12 m.** | **1-2 y** | **2-3 y.** | **3-5 y** | **5 y>** | **Disposition time, in days** |
| **1** | **Civil cases** | | | | | | | | | | | |
| 1a | Litigious divorces | | | | | | | | | | | |
| 1b | Dismissals | | | | | | | | | | | |
| … | … | | | | | | | | | | | |
| **2** | **Administrative** | | | | | | | | | | | |
| 2a | … | | | | | | | | | | | |
| … | | | | | | | | | | | | |
| **3** | **Criminal cases** | | | | | | | | | | | |
| 3a | Intentional homicides | | | | | | | | | | | |
| 3b | Robberies | | | | | | | | | | | |
| … | … | | | | | | | | | | | |
| | **TOTAL OF CASES** | | | | | | | | | | | |

*3b. Information on total duration of proceedings*

It is particularly important that the cases in the court also can be distinguished according to their total duration. The total duration is the time between the initiation of the proceedings and the final disposal of the case (see the CEPEJ Time-management checklist and SATURN Guidelines). If possible, the time needed to enforce the decisions should also be appended to the information on total timeframes of proceedings.

**4. Monitoring of intermediate stages of proceedings and waiting time**

The monitoring of timeframes should not be limited to the collection of data regarding total timeframes between the start and the end of the proceedings. Information on duration of intermediate stages of the proceedings should also be collected. At the minimum, the stages to be monitored should include the duration of the preparatory stage of the proceedings (e.g. time between the start of the proceedings and the first hearing on the merits), the central stage (e.g. from the first to the last hearing on the merits) and the concluding stage of the trial (e.g. from the last hearing to the delivery of the decision on the merits). The data on duration of appeals proceedings, or duration of other legal remedies should also be available. Special monitoring should be provided for the periods of inactivity (waiting time).

This statistic must be completed at national level by the relevant body (Ministry of Justice, High Council for the Judiciary, etc.).

*Example IV:*

**City Court of Danubia**

| | Type of case | *Average duration of intermediate stages in the proceedings (situation as per 31.12.2008.)* | | | | | |
|---|---|---|---|---|---|---|---|
| | | ***Trial stage*** | | | ***Legal remedies*** | | |
| | | **Preparation of the proceeding** | **Hearings** | **Judgment** | **Appeal** | **Special recourse** | **Other** |
| **1** | **Civil cases** | | | | | | |
| 1a | Litigious divorces | | | | | | |
| 1b | Dismissals | | | | | | |
| … | … | | | | | | |
| **2** | **Administrative** | | | | | | |
| 2a | … | | | | | | |
| … | | | | | | | |
| **3** | **Criminal cases** | | | | | | |
| 3a | Intentional homicides | | | | | | |
| 3b | Robberies | | | | | | |
| … | … | | | | | | |
| | **TOTAL** | | | | | | |

**5. Analytical information and indicators**

Based on the general data on courts, numbers of cases and their duration, as well as on the other relevant information on the courts and judicial system, further instruments may be used as indicators and benchmarks of performance in the courts.

*Inter alia*, the following indices can be used to analyse and monitor the duration and other factors important for the understanding of timeframes in the court:

1. **Clearance rate (CR indicator):** Relationship between the new cases and completed cases within a period, in percentage.

$$\text{Clearance Rate}(\%) = \frac{\text{resolved cases}}{\text{incoming cases}} \text{x} 100$$

***Example:*** If in a calendar year 500 new cases were submitted to the court, and the court completed at the same time 550 cases, the CR is 110%. If the court would complete 400 cases, the CR would be 80%. A CR above 100 % means that the number of pending cases decreases.

2. **Case Turnover ratio:** Relationship between the number of resolved cases and the number of unresolved cases at the end. This requires a calculation of the number of times during the year (or other observed period) that the standardized case types are turned over or resolved.

$$\text{Case Turnover Ratio} = \frac{\text{Number of Resolved Cases}}{\text{Number of Unresolved Cases at the End}}$$

3. **Disposition time (DT indicator):** it compares the number of resolved cases during the observed period and the number of unresolved cases at the end of the observed period. 365 is divided by the number of resolved cases divided by the number of unresolved cases at the end, so as to be able to express it in number of days. The ratio measures how quickly the judicial system (of the court) turns over received cases – that is, how long it takes for a type of cases to be resolved. This indicator provides further insight into how a judicial system manages its flow of cases.

$$DispositionTime = \frac{365}{CaseTurnoverRatio}$$

**Other indicators (for information)**

4. **Efficiency rate (ER indicator):** Relationship between the number of personnel used in a court in a year and the output of cases from the same court at the end of the year.
5. **Total backlog (TB indicator):** Cases remaining unresolved at the end of the period, defined as difference between the total number of pending cases at the beginning of the period, and the cases resolved within the same period. ***Example*:** If there were 1000 cases pending at the beginning of the calendar year, and the court terminated 750 cases during the calendar year, at the end of the calendar period there would be 250 cases that are calculated as total backlog.
6. **Backlog resolution (BR indicator):** The time needed to resolve the total backlog in months or days, calculated as the relationship between the number of cases and the clearance time. ***Example:*** If there are 100 cases considered as total backlog at the end of the period, and the court completed 200 cases in the same period, the BR indicator is 6 months or 180 days.
7. **Case per judge (CPJ indicator):** Number of cases of a particular type per judge in the given period. ***Example:*** If a court has 600 pending civil cases at the end of the calendar year and 4 judges that deal with them, the CPC is 150.
8. **Standard departure (SD indicator):** Departure from the set targets per type of case in the given period, in percentage or days. ***Example:*** If the target for completion of litigious divorce case in the first instance was set to be 200 days, and in the calendar year the average duration of such cases was 240 days, the SD indicator is 40 days or 20%.

**Appendix II**

# Number of cases per court – V2.0

| Court or branch of jurisdiction | Cases | | | |
|---|---|---|---|---|
| | Cases pending on 01.01.2008 | New cases initiated | Resolved cases | Cases pending on 31.12.2008 |
| Court A | 362 | 1027 | 1089 | 300 |
| Court B | 397 | 1131 | 1210 | 318 |
| Court C | 279 | 771 | 853 | 197 |
| Court D | 262 | 1072 | 1056 | 278 |
| Court E | 279 | 1085 | 1094 | 270 |
| Court F | 999 | 1014 | 1312 | 701 |
| Court G | 877 | 1086 | 1374 | 589 |
| Court H | 0 | 7 | 7 | 0 |
| TOTAL | 3455 | 7193 | 7995 | 2653 |

# Number of cases per type – V2.0

| Type of cases | Cases | | | |
|---|---|---|---|---|
| | Cases pending on 01.01.2008 | New cases initiated | Resolved cases | Cases pending on 31.12.2008 |
| 1. Civil cases | | | | |
| Litigious divorce | 362 | 1027 | 1089 | 300 |
| Dismissal case | 279 | 771 | 853 | 197 |
| .... | 0 | 0 | 0 | 0 |
| 2. Administrative cases | | | | |
| .... | 0 | 0 | 0 | 0 |
| 3. Criminal cases | | | | |
| Robbery | 279 | 1085 | 1094 | 270 |
| Intentional homicide | 877 | 1086 | 1374 | 589 |
| .... | 0 | 0 | 0 | 0 |
| TOTAL | 1797 | 3969 | 4410 | 1356 |

# Duration of cases V.2

| Court or branch of jurisdiction | Cases | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Distribution | | | | | | | | | | |
| | Resolved cases | Cases pending on | < 1 month | 1-3 months | 4-6 months | 7-12 months | 1-2 years | 2-3 years | 3-5 years | > 5 years | Disposition time in days |
| **1. Civil cases** | | | | | | | | | | | |
| Litigious divorce | **5456** | **1915** | **668** | **1675** | **1172** | **1137** | **781** | **23** | **0** | **0** | **128.11** |
| Dismissal case | **1371** | **428** | **244** | **774** | **231** | **81** | **40** | **1** | **0** | **0** | **113.95** |
| .... | **0** | **0** | **0** | **0** | **0** | **0** | **0** | **0** | **0** | **0** | **FAUX** |
| **2. Administrative cases** | | | | | | | | | | | |
| .... | **0** | **0** | **0** | **0** | **0** | **0** | **0** | **0** | **0** | **0** | **FAUX** |
| **3. Criminal cases** | | | | | | | | | | | |
| Robbery | **1161** | **314** | **438** | **530** | **147** | **35** | **11** | **0** | **0** | **0** | **98.72** |
| Intentional homicide | **7** | **0** | **2** | **4** | **1** | **0** | **0** | **0** | **0** | **0** | **52.14** |
| .... | **0** | **0** | **0** | **0** | **0** | **0** | **0** | **0** | **0** | **0** | **FAUX** |
| **Total** | **7995** | **2657** | **1352** | **2983** | **1551** | **1253** | **832** | **24** | **0** | **0** | **121.30** |

$$\text{Disposition time} = \frac{365}{\text{(nbr of resolved cases / nbr of unresolved cases)}}$$

## Average duration in the proceedings

| Average duration of the intermediate stages in the proceedings | | | | | | |
|---|---|---|---|---|---|---|
| | Trial stage | | | Legal remedies | | |
| **Type of cases** | **Preparation (nb days)** | **Hearings (nb days)** | **Judgement (nb days)** | **Appeal (nb weeks)** | **Special recourse (nb weeks)** | **Other (nb weeks)** |
| **1. Civil cases** | | | | | | |
| Litigious divorce | 80 | 20 | 80 | 18 | 18 | – |
| Dismissal case | 60 | 2 | 20 | 18 | – | – |
| .... | | | | | | |
| **2. Administrative cases** | | | | | | |
| .... | | | | | | |
| **3. Criminal cases** | | | | | | |
| Robbery | 150 | 30 | 70 | 20 | 15 | – |
| Intentional homicide | 120 | 20 | 60 | 20 | 12 | – |
| .... | | | | | | |

**Appendix III**

**Key data on justice in Europe**

## Demographic and economic data

1. **Inhabitants, GDP and average gross annual salary**

| | |
|---|---|
| Number of inhabitants | |
| Per capita GDP (gross domestic product) in euro | |
| Average gross annual salary in euro | |

2. **Total annual budget allocated to all courts** (euro)

3. **Does the budget of the courts include the following items?**
Please give for each item a specification of the amount concerned (if possible)

| | Yes | Amount (euro) |
|---|---|---|
| Annual public budget allocated to salaries | ☐ | |
| Annual public budget allocated to computerisation | ☐ | |
| Annual public budget allocated to legal costs | ☐ | |
| Annual public budget allocated to court buildings | ☐ | |
| Annual public budget allocated to training and education | ☐ | |
| Annual public budget allocated to legal aid | ☐ | |
| Other (please specify): | ☐ | |

4. **Annual public budget allocated to the prosecution services**

5. **Is the budget allocated to the public prosecution included in the court budget?**

☐ Yes
☐ No

## Legal Aid (Access to justice)

6. **Annual number of legal aid (provided by public authorities) cases and annual public budget allocated to legal aid** (complete the table)

| | Number | Amount |
|---|---|---|
| Criminal cases | | |
| Other than criminal cases | | |
| Total of legal aid cases | | |

## Organisation of the court system and the public prosecution

7. **Judges, non-judge staff and Rechtspfleger** (complete the table)

| | Total number |
|---|---|
| Professional judges (full time equivalent and permanent posts) | |

| | |
|---|---|
| Professional judges sitting in courts on an occasional basis and paid as such | |
| Non-professional judges (including lay-judges) who are not remunerated but who can possibly receive a defrayal of costs | |
| Non-judge staff working in the courts (full time equivalent and permanent posts) | |
| Rechtspfleger (if applicable) | |

8. **Public prosecutors and non-prosecutor staff of the prosecution services** (complete the table)

| | Total number |
|---|---|
| Total number of public prosecutors (full time equivalent and permanent posts) | |
| Total number of staff (non-prosecutors) attached to the public prosecution service (full time equivalent and permanent posts) | |

9. **Level of computer facilities used within the courts**

| Functions | Facilities | 100% of courts | +50% of courts | -50% of courts | - 10 % of courts |
|---|---|---|---|---|---|
| Direct assistance to the judge/court clerk | Word processing | ☐ | ☐ | ☐ | ☐ |
| | Electronic data base of jurisprudence | ☐ | ☐ | ☐ | ☐ |
| | Electronic files | ☐ | ☐ | ☐ | ☐ |
| | E-mail | ☐ | ☐ | ☐ | ☐ |
| | Internet connection | ☐ | ☐ | ☐ | ☐ |
| Administration and management | Case registration system | ☐ | ☐ | ☐ | ☐ |
| | Court management information system | ☐ | ☐ | ☐ | ☐ |
| | Financial information system | ☐ | ☐ | ☐ | ☐ |
| Communication between the court and the parties | Electronic forms | ☐ | ☐ | ☐ | ☐ |
| | Special Website | ☐ | ☐ | ☐ | ☐ |
| | Other electronic communication facilities | ☐ | ☐ | ☐ | ☐ |

## The performance and workload of the courts and the public prosecution

10. **Number of cases regarding Article 6 of the European Convention of Human Rights (on duration and non-execution), for the year of reference**

| | Cases declared inadmissible by the Court | Friendly settlements | Judgements establishing a violation | Judgements establishing a non violation |
|---|---|---|---|---|
| Civil proceedings - Article 6§1 (duration) | | | | |
| Civil proceedings - Article 6§1 (non-execution) | | | | |
| Criminal proceedings - Article 6§1 (duration) | | | | |

11. **Total number of civil cases in the courts** (litigious and non-litigious):

12. **Litigious civil cases and administrative law cases in the courts** (complete the table)

| | | **Litigious civil cases** | **Litigious administra-tive cases** | **Litigious Divorce cases** | **Employme nt dismissal** |
|---|---|---|---|---|---|
| Total number (1st instance) | Pending cases by 1 January of the year of reference | | | | |
| | Pending cases by 31 December of the year of reference | | | | |
| | Incoming cases | | | | |
| | Decisions on the merits | | | | |
| Average length (from date of lodging of court proceedings) of 1st instance proceedings | | | | | |

13. **Number of cases received and treated by the public prosecutor** (complete the table)

| | | **Total number of 1st instance criminal cases** |
|---|---|---|
| Received by the public prosecutor | | |
| Discontinued by the public prosecutor | In general | |
| | because the offender could not be identified | |
| | due to the lack of an established offence or a specific legal situation | |
| Concluded by a penalty, imposed or negotiated by the public prosecutor | | |
| Charged by the public prosecutor before the courts | | |

14. **Criminal cases in the courts** (complete the table)

| | | **Criminal cases (total)** | **Robbery cases** | **Intentional homicides** |
|---|---|---|---|---|
| Total number (1st instance) | Pending cases by 1 January of the year of reference | | | |
| | Pending cases by 31 December of the year of reference | | | |
| | Incoming cases | | | |
| | Judicial decisions | | | |
| Average length (from the date of official charging) of 1st instance proceedings | | | | |

## Execution of court decisions

15. **As regards a decision on debts collection, can you estimate the average timeframe to notify the decision to the parties which live in the city where the court seats:**

- ☐ between 1 and 5 days
- ☐ between 6 and 10 days
- ☐ between 11 and 30 days
- ☐ more

# Revised SATURN guidelines for judicial time management (2nd revision)

## Introduction

1. All national court administrations, willing to apply such guidelines should undertake comparative analyses of the SATURN guidelines and the time management tools used by the courts in their jurisdictions, identify SATURN guidelines that are not implemented and develop efficient strategies on how to implement and improve them.

2. The time management guidelines of SATURN must be translated and made available to all courts, judicial administrations, ministries of justice, local and national lawyers associations, public prosecutors and crime units in the police, victims' organizations and other user organizations and enforcement agencies in all member states. All users should be encouraged to implement them as appropriate.

## PART I: GUIDELINES FOR COURTS

### I. General principles and guidelines

#### *A. Transparency and foreseeability*

1. The users of the justice system should be involved in the time management of judicial proceedings.

2. The users should be informed and, where appropriate, consulted regarding every relevant aspect that influences the length of proceedings.

3. The length of proceedings should be foreseeable as far as possible.

4. The general statistical and other data regarding the length of proceedings, in particular per types of cases, should be available to the general public.

#### *B. Optimum length*

1. The length of judicial proceedings should be appropriate.

2. It is particularly important and in the public interest that the length of judicial proceedings is not unreasonable. Cases should not be excessively long. They should, under some circumstances, also not be too short, if this would unduly impact the users' right of access to court.

3. The time management of judicial proceedings, if not determined by the behaviour of the users themselves, should be decided in an impartial and objective manner, avoiding significant differences with regard to timing of similar cases.

4. Particular attention should be given to the appropriateness of the total length of proceedings, from the initiation of the proceedings to the final satisfaction of the aims that the users wanted to obtain through judicial process.

#### *C. Planning and collection of data*

1. The length of judicial proceedings should be planned, both at the general level (planning of average/mean duration of particular types of cases, or average/mean duration of process before certain types of courts), and at the level of concrete proceedings.

2. The users are entitled to be consulted in the time management of the judicial process and in setting the dates or estimating the timing of all future procedural steps.

3. The length of judicial proceedings should be monitored through an integral and well-defined system of collection of information. Such a system should be able to promptly provide both the detailed statistical data on the length of proceedings at the general level, and identify individual instances at the origin of excessive and unreasonable length.

### *D. Flexibility*

1. The time management of the judicial process has to be adjusted to the needs of the concrete proceedings, paying special attention to the needs of users.

2. The normative setting of time-limits by legislation or other general acts should be used cautiously, having regard to possible differences in concrete cases. If the time limits are set by the law, their observance and appropriateness should be continually monitored and evaluated.

3. If the law provides that particular types of cases should have priority or be decided urgently, this general rule has to be interpreted in a reasonable way, in the light of the purpose for which the urgency or priority was provided for.

### *E. Loyal collaboration of all stakeholders*

1. Optimum and foreseeable length of proceedings[6] should be within the responsibility of all institutions and persons who participate in the design, regulation, planning and conduct of judicial proceedings, in particular by taking into account ethical rules.

2. In particular, the actions needed to ensure the implementation of the principles and guidelines contained in this document should be undertaken by legislators, policy makers and the authorities responsible for the administration of justice.

3. The central bodies responsible for the administration of justice have the duty to ensure that the means and conditions necessary for appropriate time management are available, and take action where appropriate. The bodies of court administration have to assist in the time management by collecting information and facilitating the organisation of judicial proceedings. The bodies that conduct the proceedings should actively engage in the planning and organisation of the proceedings.

4. Framework agreements with lawyers regarding timeframes and deadlines will be welcome in all jurisdictions where the cooperation of lawyers is important for putting forward suitable calendars for each case.

## II. Guidelines for legislators and policy makers

### *A. Resources*

1. The judicial system needs to have sufficient resources to cope with its regular workload in due time. The resources have to be distributed according to the needs and must be used efficiently.

2. There should be resources that can be utilised in case of unexpected changes in the workload or the inability of the system to process the cases promptly.

3. The decisions on the utilisation of resources for the functioning of the judiciary should be made in a way that stimulates effective time management. If it is necessary, it should be possible to reallocate the resources in a fast and effective way in order to avoid delays and backlogs.

### *B. Organisation*

1. The judicial bodies should be organised in a way that encourages effective time management.

2. Within the organisation, the responsibility for time management or judicial processes has to be clearly determined. There should be a unit that permanently analyses the length of proceedings with a view to identify trends, anticipate changes and prevent problems related to the length of proceedings.

3. All organisational changes that affect the judiciary should be studied as regards the possible impact on the time management of judicial proceedings.

[6] See the Framework Programme: "A new objective for judicial systems: the processing of each case within an optimum and foreseeable timeframe (CEPEJ(2004)19Rev2) and the "CEPEJ Study N°3: Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights" (F. Calvez, updated in 2012 by N. Régis – Council of Europe publishing) available on www.coe.int/cepej.

### *C. Substantive law*

1. The legislation has to be clear, simple, in plain language and not too difficult to implement. The changes in substantive law have to be well prepared.

2. When enacting new legislation, the government should always study its impact on the volume of new cases and avoid rules and regulations that may generate backlogs and delays**.**

3. Both the users and the judicial bodies have to be informed in advance about changes in legislation, so that they can implement them in a timely and efficient way.

### *D. Procedure*

1. The rules of judicial procedures must enable to respect optimum timeframes. The rules that unnecessarily delay the proceedings or provide for overly complex procedures have to be eliminated or amended**.**

2. The rules of judicial procedure should take into account the applicable recommendations of the Council of Europe, in particular the recommendations**:**

- R(81)7 on measures facilitating access to justice,
- R(84)5 on the principle of civil procedure designed to improve the functioning of justice,
- R(86)12 concerning measures to prevent and reduce the excessive workload in the courts,
- R(87)18 concerning the simplification of criminal justice,
- R(95)5 concerning the introduction and improvement of the functioning of appeal systems and procedures in civil and commercial cases,
- R(95)12 on the management of criminal justice,
- R(2001)3 on the delivery of court and other legal services to the citizen through the use of new technologies.

3. In drafting or amending the procedural rules, due regard has to be made to the opinion of those who will apply these procedures.

4. The procedure in the first instance should be concentrated, while at the same time affording to users their right to a fair and public hearing.

5. Further use of accelerated proceedings should be encouraged, where appropriate.

6. In appropriate cases, the appeal options can be limited. In certain cases (e.g. small claims) the appeal may be excluded, or a leave to appeal may be requested. Manifestly ill-founded appeals may be declared inadmissible or rejected in a summary way.

7. The recourse to the highest instances has to be limited to the cases that deserve their attention and review.

## III. Guidelines for authorities responsible for administration of justice

### *A. Division of labour*

1. The duty to contribute to appropriate time management is shared by all the authorities responsible for the administration of justice (courts, judges, administrators), and all persons involved professionally in the judicial proceedings (e.g. experts and lawyers), each within his competences.

2. All authorities responsible for the administration of justice have to cooperate in the process of setting standards and targets. In the elaboration of these standards and targets the other stakeholders and the users of the justice system should also be consulted.

### *B. Monitoring*

1. The timeframes of judicial proceedings have to be scrutinised through statistics. There should be sufficient information with respect to the length of particular types of cases, and the length of the all stages of judicial proceedings.

2. It should be made clear that the standards and targets for the specific types of cases and/or specific courts are being observed.

3. The body in charge of individual proceedings has to monitor the compliance with the time limits that are being set or agreed with the other participants in the proceedings.

4. The monitoring should be done in accordance with the European Uniform Guidelines for Monitoring of Judicial Timeframes – EUGMONT.

### *C. Intervention*

1. If departures from standards and targets for judicial timeframes are being observed or foreseen, prompt actions should be taken in order to remedy the causes of such departures.

2. Particular attention should be given to cases where integral duration is such that it may give rise to the finding of the violation of the human right to a trial within reasonable time.[7]

3. The monitoring should make sure that the periods of inactivity (waiting time) in the judicial proceeding are not excessively long, and wherever such extended periods exist, particular efforts have to be made in order to speed up the proceeding and compensate for the delay[8].

### *D. Use of new technologies*

1. The use of new technologies within courts should be encouraged in order to reduce timeframes of judicial proceedings, in particular for the case management and during the proceedings, in particular:

- telephone-conferences and video-conferences at different stages of the proceedings;
- electronic communication between the court and the parties and more generally for all relations between participants to the proceedings;
- consulting files at a distance;
- codification of offences.

### *E. Accountability*

1. Everyone who, by his act or omission, causes delays and adversely affects the observance of set standards and targets in the time management should be held accountable.

2. In addition to the individual accountability for the ineffective time management, the state may be held jointly and severally accountable for the consequences caused to the users by the unreasonable length of proceedings.

## IV. Guidelines for court managers

### *A. Collection of information*

1. Court managers should collect information on the most important steps in the judicial process. They should keep records regarding the duration between these steps. In respect to the steps monitored, due regard should be given to the Time management Checklist, Indicator Four[9].

2. The information collected should be available, to inform the work of court administrators, judges and the central authorities responsible for the administration of justice. In appropriate form, the information should also be made available to the parties and the general public.

[7] See CEPEJ Studies No. 3: "Length of court proceedings in the member states of the Council of Europe based on the case-law of the European Court of Human Rights".

[8] The duty to pay special attention to the periods of inactivity that can be attributed to the courts and other state authorities also arises out of the case-law of the European Court of Human Rights in relation to Art.6 of the European Convention on Human Rights.

[9] Time management Checklist (CEPEJ(2005)12Rev).

### *B. Continuing analysis*

1. All information collected should be continually analysed and used for the purposes of monitoring and the improvement of performance.

2. The collected information should be available for the purposes of statistical evaluation. Subject to the protection of privacy, the collected data should also be available to independent researchers and research institutions for the purposes of scientific analysis.

3. The reports on the results of analysis should be produced at regular intervals, at least once a year, with appropriate recommendations.

### *C. Established targets*

1. In addition to the standards and targets set at the higher level (national, regional), there should be specific targets at the level of individual courts. The court managers should have sufficient authorities and autonomy to actively set or participate in setting of these targets.

2. The targets should clearly define the objectives and be achievable. They should be published and subject to periodical re-evaluation.

3. The targets may be used in the evaluation of the court performance. If they are not achieved, concrete steps and actions have to be taken to remedy the situation.

### *D. Crisis management*

1. In the situations where there is a significant departure from the targets set at the court level, there should be specific means available to rapidly and adequately address the cause of the problem.

## V. Guidelines for judges

### *A. Active case management*

1. The judge should have sufficient powers to actively manage the proceedings.

2. Subject to general rules, the judge should be authorized to set appropriate time limits and adjust the time management to the general and specific targets as well as to the particulars of each individual case.

3. Standard electronic templates for the drafting of judicial decisions and judicial decision support software should be developed and used by judges and court staff.

### *B. Timing agreement with the parties and lawyers*

1. In the time management of the process, due regard should be given to the interests of the users. They have the right to be involved in the planning of the process at an early stage.

2. Where possible, the judge should attempt to reach agreement with all participants in the procedure regarding the procedural calendar. For this purpose, he should also be assisted by appropriate court personnel (clerks) and information technology.

3. The deviations from the agreed calendar should be minimal and restricted to justified cases. In principle, the extension of the set time limits should be possible only with the agreement of all parties, or if the interests of justice so require.

### *C. Co-operation and monitoring of other actors (experts, witnesses etc.)*

1. All participants in the process have the duty to co-operate with the court in the observance of set targets and time limits.

2. In the process, the judge has the right to monitor the observance of time limits by all participants, in particular those invited or engaged by the court, such as witnesses or experts.

### *D. Suppression of procedural abuses*

1. All attempts to willingly and knowingly delay proceedings should be discouraged.

2. There should be procedural sanctions for causing delay and vexatious behaviour. These sanctions can be applied either to the parties or their representatives.

**3.** If a member of a legal profession grossly abuses procedural rights or significantly delays the proceedings, it should be reported to the respective professional organisation for further consequences.

### *E. The reasoning of judgments*

1. The reasoning of all judgments should be concise in form and limited to the essential issues. The purpose should be to explain the decision. Only questions relevant to the decision of the case should be taken into account.

2. It should be possible for judges, in appropriate cases, to give an oral judgement with a written decision.

## PART II: GUIDELINES FOR PROSECUTORS

### Introduction

The scope of the guidelines is for prosecutors in the criminal procedure. These particular guidelines cover primarily the preliminary phase of investigation, before the phase in the court (pre-trial stage), whatever the legal system of the country concerned.

Prosecutor is understood as the competent person for the preliminary stage of investigation of the criminal procedure.

Other guidelines, as stated in Part I of this document, apply *mutatis mutandis* to prosecutors:

### *A. Planning and collection of data*

1. The length of criminal proceedings should be planned at the investigation stage, the prosecutorial stage and before the courts (planning of average/mean duration of particular types of cases, or average /mean duration of process before certain types of judicial bodies. Planning should take place both at the general level and at the level of individual cases in accordance with timeframes indicated in procedural law.

2. The users (suspects, victims, defenders) are entitled to be informed, and where possible, consulted in the time management of the judicial process and in setting the dates or estimating the timing of all future procedural steps from the beginning of the investigations.

### *B. Intervention*

1. If departures from standards and targets for prosecutorial time frames are being observed or foreseen, prompt actions should be taken in order to remedy such departures.

2. Particular attention should be given to the cases where total duration is such that it may give rise to the finding of the violation of the fundamental right to a trial within reasonable time. Measuring of time use starts with the beginning of the pre-trial stage when a person is substantially affected by the investigation[10]. Special attention should be paid to the use of arrest or custody, the opening of preliminary investigation against him or when he is formally charged with the offence by the police or prosecution. Counting ends when the final judgment is given by the court or the prosecution is otherwise terminated by the prosecutor or the court. Records that clearly show the dates relevant for measuring time use according to the reasonable time criterion should be part of the case file when the case arrives in court.

[10] See report CEPEJ(2012)16E - Length of court proceedings in the member states of the Council of Europe based on the case-law of the European Court of Human Rights (state as at 31 July 2011), F. Calvez, N. Régis

Special attention should be paid to *priority* cases such as cases in which the suspect is in custody or already serving prison sentence and police violence cases.

These records should clearly show the dates of:

- the commitment of the offence;
- the arrest of the suspect;
- the use of pre-trial detention;
- the start of the investigations;
- the issuing of the indictment.

3. The monitoring should make sure that the periods of inactivity (waiting time) in the criminal proceedings are not excessively long, and wherever such periods exist, particular efforts have to be made in order to speed up the proceeding and make up for the delay.

### *C. Collection of information*

1. Prosecutors and managers should collect information on the most important steps in the criminal proceeding – especially at the pre-trial stage. They should keep records regarding the duration between these steps. In respect to the steps monitored, due regard should be given to the Time management Checklist, Indicator Four.

2. The information collected (in accordance with the above mentioned paragraph) should be available to guide the work of prosecutors, court administrators, judges and the central authorities responsible for the administration of justice. In appropriate form, the information should also be made available to the users and the general public.

### *D. Continuing analysis*

**1.** All information collected should be continually analysed and used for the purposes of monitoring and the improvement of performance.

**2.** The reports on the results of these analyses should be produced at regular intervals, at least once a year, with appropriate recommendations.

### *E. Established targets*

1. In addition to the standards and targets set at the higher level (national, regional), there should be specific targets at the level of individual prosecutor offices. Prosecutors and managers should have sufficient authority and autonomy to actively set or participate in setting of these targets.

2. The targets should be clearly defined and be achievable. They should be published and be subject to periodical re-evaluation.

3. The targets may be used in the evaluation of the performance of prosecutors. If they are not achieved, the concrete steps and actions have to be taken to remedy the situation.

### *F. Crisis management*

1. If departures from targets set by prosecutor offices are being observed or foreseen, prompt actions should be taken in order to remedy such departures.

### *G. Timing agreement with the parties and lawyers and coordination between involved authorities*

1. Where possible, the prosecutors should attempt to involve all participants in the procedure regarding the procedural calendar. For this purpose, they should also be assisted by appropriate administration personnel (clerks and police) and information technology.

2. The deviations from the agreed calendar should be minimal and restricted to justified cases. In principle, the extension of the set time limits should be possible only with the agreement of all participants, or if the interests of justice so require.

**Appendix I**

**EUROPEAN UNIFORM GUIDELINES**
**FOR MONITORING OF JUDICIAL TIMEFRAMES**
(**EUGMONT**)

**1. General data on courts and court proceedings**

System of monitoring should have available and public information on the general design of the judicial system, with special attention to the information relevant for the time management of the proceedings. The information on the general level should include accurate information on:

- the number and types of courts and their jurisdiction;
- the number and types of proceedings in the courts;
- the proceedings designated as priority (urgent) cases;

The data on judicial system should be regularly updated, and be available at least on the annual level (start/end of the calendar year). The following data on the number of proceedings in the courts should be available:

- total number of proceedings pending at the beginning of the monitored period (e.g. calendar year);
- new proceedings (proceedings initiated within the monitored period, e.g. in the calendar year);
- resolved cases (proceedings finalized within the monitored period either through a decision on the merit, a withdrawal of the case, a friendly settlement, etc…);
- total number of proceedings pending at the end of the monitored period.

The data on the finalized proceedings can be split according to the way how the proceedings ended. At least, the cases that ended by a decision on the merits should be distinguishable from the cases that ended otherwise (withdrawal of the claim, settlement, rejection on formal grounds).

*Example I.*

**Courts of the State of Alpina**

| | Court or branch of jurisdiction | Cases pending on 1.1.2008 | New cases initiated in 2008 | Resolved cases in 2008 | Cases pending on 31.12.2008 |
|---|---|---|---|---|---|
| 1 | Court(s) A | | | | |
| 2 | Court(s) B | | | | |
| 3 | Court(s) C | | | | |
| | **TOTAL** | | | | |

**N.B: "cases pending on 31.12.2008" = "cases pending on 1.1.2008" + "new cases initiated in 2008" – "resolved cases in 2008".**

**2. Information on types of cases**

The information about the cases in the courts should be available both as the total, aggregate information, and as information divided according to the types of cases. For this purpose, some general and universal categories of cases should be utilized, such as division on civil, criminal and administrative cases.

Within the general categories, a more detailed types or groups of cases should be distinguished (e.g. labour cases; murder cases), and the same information should be available for the appropriate subtypes (e.g. employment dismissal cases within labour cases).

**At this stage, each court can use its own case category. However the following four categories are mandatory for each court: litigious divorce, dismissal, robbery and intentional homicide.**

- *Litigious divorce cases*: i.e. the dissolution of a marriage contract between two persons, by the judgement of a court of a competent jurisdiction. The data should not include: divorce ruled by an agreement between the parties concerning the separation of the spouses and all its

consequences (procedure of mutual consent, even if they are processed by the court) or ruled through an administrative procedure. If your country has a totally non-judicial procedure as regards divorce or if you cannot isolate data concerning adversarial divorces, please specify it and give the subsequent explanations. Furthermore, if there are in your country, as regards divorce, compulsory mediation procedures or reflecting times, or if the conciliation phase is excluded from the judicial proceeding, please specify it and give the subsequent explanations.

- *Employment dismissal cases:* cases concerning the termination of (an) employment (contract) at the initiative of the employer (working in the private sector). It does not include dismissals of public officials, following a disciplinary procedure for instance.

- *Robbery* concerns stealing from a person with force or threat of force. If possible these figures should include: muggings (bag-snatching, armed theft, etc.) and exclude pick pocketing, extortion and blackmail (according to the definition of the European Sourcebook of Crime and Criminal Justice). The data should not include attempts.

- *Intentional homicide* is defined as the intentional killing of a person. Where possible the figures should include: assault leading to death, euthanasia, infanticide and *exclude* suicide assistance (according to the definition of the European Sourcebook of Crime and Criminal Justice). The data should not include attempts.

For the purposes of further comparison with other European systems, the precise definition and scope of the other case type used by the court (especially the non-common categories) should be appended.

*Example II.*
**City Court of Danubia**

| | Type of case | Cases pending on 1.1.2008 | New cases initiated in 2008 | Resolved cases in 2008 | Cases pending on 31.12.2008 |
|---|---|---|---|---|---|
| **1** | **Civil cases** | | | | |
| 1a | Litigious divorces | | | | |
| 1b | Dismissals | | | | |
| … | … | | | | |
| **2** | **Administrative** | | | | |
| 2a | … | | | | |
| … | | | | | |
| **3** | **Criminal cases** | | | | |
| 3a | Intentional homicides | | | | |
| 3b | Robberies | | | | |
| … | … | | | | |
| | **TOTAL** | | | | |

### 3. Information on timeframes of proceedings

*3a. Information on court-based timeframes of proceedings per duration periods and average/maximum timeframes*

Every court should collect data regarding the timeframes of proceedings that are taking place in the court. Pending and completed cases within the period (e.g. calendar year) should be separately monitored, and the data on their duration should be split in the groups according to the periods of their duration, i.e. cases pending or completed in less than one month, 1-3 months, 4-5 months, 7 to 12 months, 1-2 years, 2-3 years, 3-5 years and more than 5 years. In addition to the spread of cases according to periods of their duration, the average and mean duration of the proceedings have to be calculated, and an indication of minimum and maximum timeframes should be given as well. The time of processing should consider only the time that was needed to process the case within the particular court, i.e. the time between the moment when the case arrived to the court and the moment when the case exited the court (e.g. final decision, transfer to a higher court to be decided on appeal, etc.). If possible, the information on timeframes of proceedings for the completed cases should be distinguishable for the cases completed after a full examination of the case (i.e. the cases

that ended by a decision on the merits) and the cases that were completed otherwise (by withdrawal, settlement, lack of jurisdiction etc.).

*Example III:*

**City Court of Danubia**

| | *Duration of cases completed in 2008 (situation as per 31.12.2008.)* | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | **Number of resolved cases** | **Number of cases pending on at the end of the** | **< 1 month.** | **1-3 month** | **4-6 month** | **7-12 month** | **1-2 year** | **2-3 y.ear** | **3-5 year** | **5 year>** | **Disposition time, in days** |
| **1** | **Civil cases** | | | | | | | | | | | |
| 1a | Litigious divorces | | | | | | | | | | | |
| 1b | Dismissals | | | | | | | | | | | |
| … | … | | | | | | | | | | | |
| **2** | **Administrative** | | | | | | | | | | | |
| 2a | … | | | | | | | | | | | |
| … | | | | | | | | | | | | |
| **3** | **Criminal cases** | | | | | | | | | | | |
| 3a | Intentional homicides | | | | | | | | | | | |
| 3b | Robberies | | | | | | | | | | | |
| … | … | | | | | | | | | | | |
| | **TOTAL OF CASES** | | | | | | | | | | | |

*3b. Information on total duration of proceedings*

It is particularly important that the cases in the court also can be distinguished according to their total duration. The total duration is the time between the initiation of the proceedings and the final disposal of the case (see the CEPEJ Time-management checklist and SATURN Guidelines). If possible, the time needed to enforce the decisions should also be appended to the information on total timeframes of proceedings.

**4. Monitoring of intermediate stages of proceedings and waiting time**

The monitoring of timeframes should not be limited to the collection of data regarding total timeframes between the start and the end of the proceedings. Information on duration of intermediate stages of the proceedings should also be collected. At the minimum, the stages to be monitored should include the duration of the preparatory stage of the proceedings (e.g. time between the start of the proceedings and the first hearing on the merits), the central stage (e.g. from the first to the last hearing on the merits) and the concluding stage of the trial (e.g. from the last hearing to the delivery of the decision on the merits). The data on duration of appeals proceedings, or duration of other legal remedies should also be available. Special monitoring should be provided for the periods of inactivity (waiting time).

This statistic must be completed at national level by the relevant body (Ministry of Justice, High Council for the Judiciary, etc.).

*Example IV:*

**City Court of Danubia**

| | Type of case | *Average duration of intermediate stages in the proceedings (situation as per 31.12.2008.)* | | | | | |
|---|---|---|---|---|---|---|---|
| | | ***Trial stage*** | | | ***Legal remedies*** | | |
| | | **Preparation of the proceeding** | **Hearings** | **Judgment** | **Appeal** | **Special recourse** | **Other** |
| **1** | **Civil cases** | | | | | | |
| 1a | Litigious divorces | | | | | | |
| 1b | Dismissals | | | | | | |
| … | … | | | | | | |
| **2** | **Administrative** | | | | | | |
| 2a | … | | | | | | |
| … | | | | | | | |
| **3** | **Criminal cases** | | | | | | |
| 3a | Intentional homicides | | | | | | |
| 3b | Robberies | | | | | | |
| … | … | | | | | | |
| | **TOTAL** | | | | | | |

**5. Analytical information and indicators**

Based on the general data on courts, numbers of cases and their duration, as well as on the other relevant information on the courts and judicial system, further instruments may be used as indicators and benchmarks of performance in the courts.

*Inter alia*, the following indices can be used to analyse and monitor the duration and other factors important for the understanding of timeframes in the court:

1. **Clearance rate (CR indicator):** Relationship between the new cases and completed cases within a period, in percentage.

$$\text{Clearance Rate}(\%) = \frac{\text{resolved cases}}{\text{incoming cases}} \text{x} 100$$

***Example:*** If in a calendar year 500 new cases were submitted to the court, and the court completed at the same time 550 cases, the CR is 110%. If the court would complete 400 cases, the CR would be 80%. A CR above 100 % means that the number of pending cases decreases.

2. **Case Turnover ratio:** Relationship between the number of resolved cases and the number of unresolved cases at the end. This requires a calculation of the number of times during the year (or other observed period) that the standardized case types are turned over or resolved.

$$\text{Case Turnover Ratio} = \frac{\text{Number of Resolved Cases}}{\text{Number of Unresolved Cases at the End}}$$

3. **Disposition time (DT indicator):** it compares the number of resolved cases during the observed period and the number of unresolved cases at the end of the observed period. 365 is divided by the number of resolved cases divided by the number of unresolved cases at the end, so as to be able to express it in number of days. The ratio measures how quickly the judicial system (of the court) turns over received cases – that is, how long it takes for a type of cases to be resolved. This indicator provides further insight into how a judicial system manages its flow of cases.

$$DispositionTime = \frac{365}{CaseTurnoverRatio}$$

**Other indicators (for information)**

4. **Efficiency rate (ER indicator):** Relationship between the number of personnel used in a court in a year and the output of cases from the same court at the end of the year.
5. **Total backlog (TB indicator):** Cases remaining unresolved at the end of the period, defined as difference between the total number of pending cases at the beginning of the period, and the cases resolved within the same period. ***Example*:** If there were 1000 cases pending at the beginning of the calendar year, and the court terminated 750 cases during the calendar year, at the end of the calendar period there would be 250 cases that are calculated as total backlog.
6. **Backlog resolution (BR indicator):** The time needed to resolve the total backlog in months or days, calculated as the relationship between the number of cases and the clearance time. ***Example:*** If there are 100 cases considered as total backlog at the end of the period, and the court completed 200 cases in the same period, the BR indicator is 6 months or 180 days.
7. **Case per judge (CPJ indicator):** Number of cases of a particular type per judge in the given period. ***Example:*** If a court has 600 pending civil cases at the end of the calendar year and 4 judges that deal with them, the CPC is 150.
8. **Standard departure (SD indicator):** Departure from the set targets per type of case in the given period, in percentage or days. ***Example:*** If the target for completion of litigious divorce case in the first instance was set to be 200 days, and in the calendar year the average duration of such cases was 240 days, the SD indicator is 40 days or 20%.

**Appendix II – Examples of synopsis**

**Please note that Appendix II includes Excel sheets with mathematic formula which can be directly used by the courts from the electronic version of this document available on: www.coe.int/cepej, file "SATURN Centre".**
***To use the document as an Excel calculation sheet, please double click on the relevant table.***

# Number of cases per court – V2.0

| Court or branch of courts | Cases | | | |
|---|---|---|---|---|
| | pending from the previous period | initiated during the peirod | resolved | pending at the en of the period |
| Court A | 362 | 1027 | 1089 | 300 |
| Court B | 397 | 1131 | 1210 | 318 |
| Court C | 279 | 771 | 853 | 197 |
| Court D | 262 | 1072 | 1056 | 278 |
| Court E | 279 | 1085 | 1094 | 270 |
| Court F | 999 | 1014 | 1312 | 701 |
| Court G | 877 | 1086 | 1374 | 589 |
| Court H | 0 | 7 | 7 | 0 |
| TOTAL | 3455 | 7193 | 7995 | 2653 |

# Number of cases per type – V2.0

| Type of cases | Cases | | | |
|---|---|---|---|---|
| | pending from the previous period | initiated during the period | resolved | pending at the end of the period |
| 1. Civil cases | | | | |
| Litigious divorces | 362 | 1027 | 1089 | 300 |
| Dismissal cases | 279 | 771 | 853 | 197 |
| .... | 0 | 0 | 0 | 0 |
| 2. Administrative cases | | | | |
| .... | 0 | 0 | 0 | 0 |
| 3. Criminal cases | | | | |
| Robberies | 279 | 1085 | 1094 | 270 |
| Intentional homicides | 877 | 1086 | 1374 | 589 |
| .... | 0 | 0 | 0 | 0 |
| TOTAL | 1797 | 3969 | 4410 | 1356 |

# Duration of cases V.2

| Court or branch of court | Cases | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Distribution | | | | | | | | | | |
| | Resolved cases | Cases pending at the end of the period | < 1 month | 1-3 months | 4-6 months | 7-12 months | 1-2 years | 2-3 years | 3-5 years | > 5 years | Disposition time in days |
| **1. Civil cases** | | | | | | | | | | | |
| Litigious divorces | **5456** | **1915** | **668** | **1675** | **1172** | **1137** | **781** | **23** | **0** | **0** | **128.11** |
| Dismissal cases | **1371** | **428** | **244** | **774** | **231** | **81** | **40** | **1** | **0** | **0** | **113.95** |
| .... | **1** | **1** | **1** | **1** | **1** | **1** | **1** | **1** | **1** | **1** | **365.00** |
| **2. Administrative cases** | | | | | | | | | | | |
| .... | **1** | **1** | **1** | **1** | **1** | **1** | **1** | **1** | **1** | **1** | **365.00** |
| **3. Criminal cases** | | | | | | | | | | | |
| Robberies | **1161** | **314** | **438** | **530** | **147** | **35** | **11** | **0** | **0** | **0** | **98.72** |
| Intentional homicides | **7** | **0** | **2** | **4** | **1** | **0** | **0** | **0** | **0** | **0** | **52.14** |
| .... | **1** | **1** | **1** | **1** | **1** | **1** | **1** | **1** | **1** | **1** | **365.00** |
| **Total** | **7998** | **2660** | **1355** | **2986** | **1554** | **1256** | **835** | **27** | **3** | **3** | **121.39** |

$$\text{Disposition time} = \frac{365}{\text{(nbr of resolved cases / nbr of unresolved cases)}}$$

## Average duration in the proceedings

| Average duration of the intermediate stages in the proceedings | | | | | | |
|---|---|---|---|---|---|---|
| | Trial stage | | | Legal remedies | | |
| Type of cases | Preparation (nb days) | Hearings (nb days) | Judgement (nb days) | Appeal (nb weeks) | Special recourse (nb weeks) | Other (nb weeks) |
| **1. Civil cases** | | | | | | |
| Litigious divorces | 80 | 20 | 80 | 18 | 18 | – |
| Dismissal cases | 60 | 2 | 20 | 18 | – | – |
| .... | | | | | | |
| **2. Administrative cases** | | | | | | |
| .... | | | | | | |
| **3. Criminal cases** | | | | | | |
| Robberies | 150 | 30 | 70 | 20 | 15 | – |
| Intentional homicides | 120 | 20 | 60 | 20 | 12 | – |
| .... | | | | | | |

# Guidelines on the Creation of Judicial Maps to Support Access to Justice within a Quality Judicial System

## 1. Introduction

### 1.1. Background and objective

Justice, along with other fundamental rights such as health, safety and freedom, represents one of the most important human rights and one of the pillars of civil society. For this reason almost every country has developed over time a network of courts, more or less extensive, with the goal of making the administration of justice as close as possible to citizens.

We live in times of permanent and profound changes: the creation of new infrastructures makes certain places more accessible than in the past when they were completely isolated; moreover, the development of modern means of transport makes it faster and easier to travel from one city to another. Technology has changed the way we work and the modes of interaction between individuals, businesses and the public administration.

In addition to all of the above, in the recent years we have been witnessing an overhaul of the production processes, whether private or public, aimed at the rationalisation of assets, at the reduction of costs and at the increase of efficiency due to the global economic crisis that is forcing most western organisations to optimise profoundly the use of their resources while maintaining high attention to quality. The administration of justice is part of this context, and as a consequence it is in the process of reviewing its organisation in a way to optimise asset allocation and increase efficiency without losing attention to the quality of both the service provided and of the judgments.

**The objective of this document is to provide a framework by which administrators and policy makers may undertake reforms and take operational decisions to design (or most probably re-design) the judicial map of an entire country or of a part of its territory.**

This document is intended as guidelines for identifying the factors that should be taken into account when deciding the size and location of a particular court to ensure that the optimum level of efficiency and quality is achieved. In other words, the objective is to maximise the service level of justice while optimising, in the meantime, operational costs and investments.

### 1.2. Judicial maps: what is it about

In the economic theory, the issue of the reorganisation of courts in terms of size and location is known as Supply Chain Management. There are hundreds of practical applications of this subject in many and different contexts that ultimately appear very similar to the design of judiciary maps. Managers of public transportation systems need to draw the map of itineraries and of the stops looking for the right balance between proximity of travellers to points of interest and sustainable number of lines and stops. In the health-care, decision makers must locate hospitals strategically in order to make first aid and the specialised departments quickly and easily accessible, but, at the same time, they need to create structures with a minimum size in order to ensure the right mix of medical competence and required equipment. Investors in a chain of gyms should try to cover as many locations as possible in the city but at the same time they need to optimise the relationship between investment in equipment and predictable flows of customers.

Exactly like the situations faced by the operators in the fields described above, that of judicial geography is therefore a problem of balance between different factors:

- Access to justice in terms of proximity of citizens to courts.
- Minimum size of a court so that the presence of various competences and functions can be ensured.
- Reduction of costs as the resources of the public administration cannot and must not be wasted but rather optimised.
- Maximisation of quality and adequate performance of the service provided.

The frame described in this introduction is useful to state an important principle underlying the spirit of this document. In fact, it is not the intention of these guidelines to identify a deterministic approach for the

definition of a perfect judicial map. Instead, just like all tools developed by the CEPEJ, this document would rather provide an overview on the creation of judicial maps by listing a series of factors to be evaluated by operators when deciding on the optimum allocation of resources. Hence it represents open guidelines aimed at helping policy makers in pursuing the objectives that have been set for the equilibrium of the respective judicial system.

As a matter of fact, reviewing the judiciary maps normally ends with a decision on which courts should remain and which are to be closed down. Therefore, the deciding authorities have to carefully evaluate the needs for justice throughout their territories and apply homogeneous rules.

### 1.3. Phases of judicial maps review

While in the past the long distances together with the limited means of communication made it necessary to build several judicial offices, often self-sufficient and self-managed, in modern times it has become necessary to see the courts as part of a “network”. Courts can no longer be seen as single and independent units but as a "constellations of offices," represented in the classical reticular shape where nodes are interrelated with other parties, both internal and external to the world justice. A network for the optimum delivery of services where it is essential, meeting the needs of the citizens.

In essence, the objective of managing the allocation of courts is to build and optimise the linkages and coordination between offices, other institutions, businesses and citizens. It consists of a process planning, organisation and management of activities, designed to optimise the flow of business, in both the criminal and civil sectors, with all relevant procedures and within the different instances of judgment, while taking into account the moves that the user must make in the geographic area where he lives in order to assist the conduction of proceedings.

The definition of a judicial map is a complex activity that needs to be broken down into phases that can take several months before they are fully completed. Such main phases can be defined as in the chart below:


A description of each macro-phase is set out in the next chapter. The paragraph dedicated to “Build and Measure Indicators” describes and provides key guidelines on a set of factors that might be taken into account by policy makers when they instigate a judicial map reform.

## 2. Conducting judicial maps review

### 2.1. Assess current judicial map and indicators

It is important to stress that, when reviewing or designing judiciary maps, the availability of data and information plays a major role. In particular, the knowledge of quantitative and where possible qualitative information about the demand of justice, as well as the types of litigation in the civil sector and types of crime in the criminal field are key to support the decision making process.

It may appear strange that the flow of phases provided in these guidelines starts from the assessment of the current situation and only then it is followed by the definition of objectives and criteria, as the logic would seem to be the opposite. This point is debatable and the guidelines do not intend to be too restrictive in this aspect. However, the intention is to stress that policy makers really need to know their judicial systems in every detail before defining objectives and especially criteria, because without a robust knowledge base the reform would be weak. Sometimes it is better to set the final goal of the reform right after having assessed the real situation, having in mind what reasonably can be pursued.

Authorities need to collect data from internal and external sources:

- judicial administration data such as incoming, completed and pending cases including all inherent sub-classifications and distribution shall be retrieved from ministries of justice and other court administration authorities;
- performance indicators like offices' and judges' productivity, proceedings disposal times can be provided by statistics departments within judicial systems or even collected by the courts themselves;
- geographic, transportation and infrastructure data can be taken from specialised authorities or rather found on reliable sites on the web;
- any other specific information such as the level of business, number of enterprises, legal assistance etc. can be retrieved by associations of professionals and again from reliable websites.

### 2.2. Set objectives and criteria

Justice is everywhere a very ancient organisation; as a consequence, the judicial maps have in many cases become obsolete and inefficient with dimensions and competences not adequate for the realities of the territories and society. This results in evident anomalies in the geographical distribution of courts as well as a suboptimal distribution of human resources leading to large differences between courts' activity level and effectiveness. Moreover, many judicial systems showed an increased backlog, with slow but inexorable increase of disposal times in both civil and criminal sector, which is in opposition to the principle of an efficient justice [11].

The baseline for starting a project of judicial map can be very different from one country to another, and therefore each reform may pursue different aims. In a country like Italy, where before the reform there were more than 2.000 courts, the decision was to reduce the number of first instance courts in order to improve the effectiveness and efficiency of the whole judicial system[12]. To reshape the judicial system, the technique used is the suppression of the smallest and less efficient structures in order to merge them with larger courts.

Other European countries are consolidating judicial functions geographically, thereby reducing the number of courts. Indeed, these reorganization processes are not only driven by financial reasons. Some countries like Denmark, Norway and the Netherlands implemented such projects in order to enhance the quality of justice. Besides economic savings and quality improvements in general, the specialization of courts by ensuring the minimum necessary number of judges, or introducing new technology and improving timeliness are mentioned as motives for upscaling[13].

At the same time we cannot exclude that there could be situations in which policy makers may be willing to introduce new judicial locations in order to reduce distance to citizens. In the Netherlands, for example, several cities with more than 100.000 inhabitants did not have any court or tribunal whereas cities with a demographic deficit still had a court[14].

In Italy, indeed, a number of anomalies exist (although partially addressed by the 2011-2012 reform): the districts of Taranto, Messina and Reggio Calabria cover areas between 2.500 and 3.200 square kilometres (each about 1% of the Italian surface) while the districts of Turin, Bologna and Florence cover areas up to ten times larger, between 22.000 and 29.000 square kilometres (each about 8% of the Italian surface). The tribunal of Mistretta in Sicily serves 22.154 residents, while Rome covers a population of 2.612.068 inhabitants. The 50 smallest courts by population served (30% of all Italian courts) account for 9% of the Italian population.

The excessive number of courts, together with the irrational distribution of resources and locations were the driving forces of many judicial maps reform in Europe, like in Croatia and in Italy. Here the issue of the geographic distribution of the courts has been debated for over a century since the unification of Italy in 1861 and up to now, though there has never been a serious legislative intention to redraw the judicial map in accordance with the structure and the real needs of the civil society.

[11] See Comparative study of the reforms of the judicial maps in Europe, Sciences Po Strasbourg Consulting – 2012.
[12] *LEGGE 14 settembre 2011, n. 148, Conversione in legge, con modificazioni, del decreto-legge 13 agosto 2011, n. 138, recante ulteriori misure urgenti per la stabilizzazione finanziaria e per lo sviluppo. Delega al Governo per la riorganizzazione della distribuzione sul territorio degli uffici giudiziari. (11G0190)*
[13] European Network of the Councils of Justice (ENCJ), Judicial Reform in Europe Report 2011-2012.
[14] See Comparative study of the reforms of the judicial maps in Europe, Sciences Po Strasbourg Consulting – 2012.

Indeed, in the Netherlands one of the main objectives of the reform was the redistribution of human resources in order to avoid misbalances, and in Italy following the reform of the judicial map a profound redistribution of human resources is being carried out at present.

As briefly mentioned above, in addition to the demographic evolution in the countries and to the unequal distribution of human resources, it is relevant to highlight the existence of a growing demand for very specific knowledge due to the growing complexity of law and business. This aspect reinforces the need for judiciary reforms that would seek to provide higher legal expertise. Here we witness another trade-off between the need for specialisation which imposes a certain minimum size of courts – and proximity to citizens which ultimately has to do with the access to justice.

### 2.3. Build and measure indicators

There are many indicators that may be used in order to establish the optimal balance between the activity of the courts and the proximity to users. In addition to this, the presence of a nearby penitentiary should represent a remarkable constraint in the decision process, as for security and economic reasons it is convenient to reduce the travel distances for prisoners who are defendants in a trial.

In Italy it was key to measure the office activity and the productivity of both judges and courts, because in the selection of first instance offices to be closed down the focus was on those with limited size and poor performance. To this end specific thresholds were used, often set at the average level of performance indicators taken over a period of five years before the reform. The principle applied was that offices with indicators far below the arithmetic average could benefit from economies of scale if merged with bigger and more productive ones.

In this regard, the factors listed below are considered most essential for a correct definition of judicial maps. They are divided into two main categories: “Key factors” which are those of primary importance, and “Additional factors” which are of secondary importance and that, if utilized, would increase the completeness and robustness of the analysis. Key factors are clearly quantitative or easily quantifiable indicators, and therefore they can be measured with objectivity. On the other hand, among the Additional factors some are qualitative indicators that are not easily measureable (e.g. the level of business, the environment for the recruitment of magistrates and staff etc.) and some have a minor impact (like mediation or the cultural sophistication) as a consequence, although some type of measurement can always be defined also for them. It is thus preferable to have them in addition to the key criteria in order to build a more robust reform.

**a) Key factors**

i) Population density
ii) Size of court
iii) Flows of proceedings and workload
iv) Geographical location, infrastructure and transportation

**b) Additional factors**

v) Computerisation
vi) Court facilities (telephone/video) and cultural sophistication
vii) Level of business
viii) ADR/mediation
ix) Availability of legal advice
x) Recruitment of judges and staff

#### 2.3.1. Population Density

Although in order to better determine the optimum size of a court, whatever the number of people living in the area of competence, the level of demand of justice has a more direct impact, we cannot neglect that a balance in terms of population served by each court is an important factor to be considered when reforming the judicial map. For example, Portugal reported an unequal distribution of the population derived from the advent of the rural exodus forcing more people to relocate to the coastal area. This results in a great increase of the demand of justice in Porto or Lisbon[15]. Also in Italy reformers observed specific moves of

[15] See Comparative study of the reforms of the judicial maps in Europe, Sciences Po Strasbourg Consulting – 2012.

populations, with regions like Veneto that once were rural becoming industrial over the last decades, with a profound change in the number, distribution and type of demand of justice. On the contrary, other locations have been facing a low demand and are quite inactive, especially if their size and staff allocation has not been reduced accordingly.

There is no given optimum number of people to be served by a court, also because it would be more correct to consider the relationship between the size of a court and the population served. Nevertheless some statistics may be given, and to this end a description of the court activity is required.

Courts perform different tasks according to the competences that are laid down in the law. In the majority of cases, courts are responsible for dealing with civil and criminal law cases, and possibly administrative matters. In addition, courts may have a responsibility for the maintenance of registers (land, business and civil registers) and have special departments for enforcement cases. Therefore, a comparison of the court systems between the member states or entities needs to be addressed with care, considering the actual jurisdictions[16].

Out of the 47 systems evaluated with reference to the situation in 2010[17], most states or entities (19) have less than one first instance court of general jurisdiction per 100.000 inhabitants. In 15 states, the rate is between 1 and 2 first instance courts per 100.000 inhabitants. Thirteen states have higher rates, but of these only Turkey, Russian Federation and Monaco have quoted more than 5 courts per 100.000 inhabitants. The figure reported by Monaco must be considered taking into account the small number of inhabitants, which has a distorting impact on ratios per 100.000 inhabitants.

Exactly as it may result within the single countries, also by looking at European judicial systems averages, we can notice a certain statistical variance in the number of population served by the first instance courts (i.e. the total number of courts for general jurisdiction and specialised matters). For example, in Belgium there is one first instance court for each 401.478 people on average, but on the other hand, in a country with a similar population such as Hungary the number of population served by each first instance court is much lower at 76.229 people. In two large comparable countries such as Spain and Italy the number of people served is 20.503 per court in Spain and 49.250 (i.e. more than the double) in Italy.

In terms of statistics it would be helpful to know that among the 42 countries assessed by the CEPEJ for this indicator, the average number of people served by a first instance court is 25.599 (calculated by dividing the total population of 712.980.053 by a total of 27.852 courts). This number is surprisingly small if we look at the list of average indicators by country, but it is due to the weight of the largest countries like the Russian Federation (9.978 courts serving 14.323 citizens each) and Turkey (4.298 courts serving 16.883 people each).

### 2.3.2. Size of Courts

A court is defined by the CEPEJ as a "body established by law and appointed to adjudicate on specific type(s) of judicial disputes within a specified administrative structure where one or several judge(s) is/are sitting, on a temporary or permanent basis". For the purposes of this paragraph we can assume to deal with general jurisdiction courts, all comparable in terms of type of disputes treated.

Indeed the size of a court may be defined by the total number of people employed, i.e. the number of magistrates, *Rechtspfleger* and other administrative staff taken together. In this sense, if we assume that in an ideal judicial system the ratio of all administrative staff vs. judges is nearly constant for all courts and that all judges bear the same, or nearly the same, workload, then more pragmatically **the size of the court can be referred to as the number of judges working in that court**[18].

What is the optimum size of a court in terms of level of business it has to deal with? In addition, what is the correct level of workload to ensure that a court benefits from economies of scale? Is there a sufficient variety of cases and numbers to ensure that the courts are utilised as much as possible?

[16] European Judicial Systems – Edition 2012 (data 2010): Efficiency and Quality of Justice (CEPEJ).
[17] European Judicial Systems – Edition 2012 (data 2010): Efficiency and Quality of Justice (CEPEJ), Figure 5.2 – Number of first instance courts of general jurisdiction (legal entities) per 100.000 inhabitants in 2010.
[18] In those judicial systems where the *Rechtspfleger* exist, the size of a court may be pragmatically understood as the total number of judges and *Rechtspfleger* working in that court.

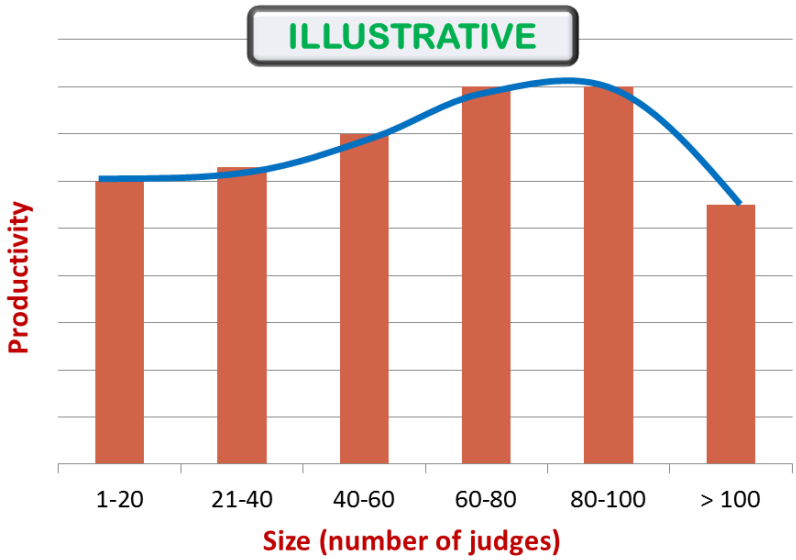
These questions are related to the problems mentioned in the first chapter of these guidelines when referring to the issue of the optimum allocation of resources. A small court may lack in productivity because the flow of proceedings is too low to exhaust the capacity of its judges. Nevertheless, a small number of judges versus the same variety of topics of the proceedings of larger courts may lead to a lack of specialisation and thus result not only in a lower efficiency (focus on cost) but also in a lower effectiveness (focus on quality). On the contrary, a large office such as those typically found in metropolitan cities may lack in productivity for inefficiencies that are strictly related to its large dimension, where bureaucracy is a constraint and prevails over the normal judicial activity.

In some situations productivity of judges may be utilised in order to determine the optimal size of a court. Productivity of a court may be defined as the number of proceedings completed by the court in a given period of time. In this sense the productivity of the office is the sum of productivities measured per each judge working in that court.

The Statistics department within the Italian Ministry of Justice has produced a study on the productivity for each court and then summarized the results by grouping offices according to their size (average productivity of offices with 0 to 10 judges, with 11 to 20 judges, and so on).

The study conducted with real numbers confirmed the common perception stated above. In fact, the curve of productivity is a parabola, i.e. the lowest levels are associated with courts of up to 20 judges, then the productivity increases with the increasing size of offices, and finally it decreases again after the size of the court attains (and exceeds) a certain (high) number of judges. In the Italian case-study shown below, the highest productivity levels are found in courts with a number of judges between 60 and 100. The productivity falls again when the number of judges exceeds 100.

However, if we consider that, on average, the overall size of other judicial systems is smaller than that of the Italian system, we can assume that the highest productivity at European level is attained in courts with an approximate number of judges between 40 and 80.




Similar studies were conducted in the Netherlands, one over the years 2002-2005 and another in the period of 2005-2009. The results were not much different from those shown above: in fact, based on the existing organizational structure, productivity was highest in medium-sized courts, while both very small and very large courts were less productive. The conclusion was that, on the one hand, it can be of benefit if small courts with an unfavourable productivity are merged into larger courts. On the other hand, the merger should not lead to the other extreme – obtaining very large courts, as these courts would be at risk of demonstrating even lower productivity than the smaller courts they emerged from[19].

If the objective of a judicial map review, or one of its goals, is to obtain courts of an average size that would optimise judges' productivity, the exercise would be that to merge small offices with low productivity into bigger ones and eventually reduce the size of some inefficient large courts.

[19] From: Judiciary In Times Of Scarcity: Retrenchment And Reform, By Frans van Dijk and Horatius Dumbrav.

In order to better understand the effects of applying such principle we can imagine two offices, Court $A_0$ with 20 judges, and Court $B_0$ with 100 judges. If they show an average productivity lower than an office with, let's say, 50 judges, we could re-design territory and competences in order to get two new offices, $A_1$ and $B_1$ with around 60 judges each. This solution was experimented with in Italy at the tribunals of Turin (reduced in size) and Ivrea (increased in size).

In a second example we can imagine two other offices, Court $C_0$ with 15 judges, and Court $D_0$ with 35 judges. If they show an average productivity lower than an office with, let's say, 50 judges, we could make a different type of intervention than the previous one consisting in the merger of offices and territory into a new one, Court $E_1$ with 50 judges, i.e. the sum of the judges from courts $C_0$ and $D_0$. This solution was extensively applied in the recent reform in Italy to about 30 small offices closed down and merged into bigger ones.

### 2.3.3. Flows of Proceedings and Workloads

For the purposes of this paragraph we assume to be dealing with general jurisdiction courts, all comparable in terms of type of disputes treated with all judges performing with the same, or nearly the same, productivity.

In the previous paragraph we gave general guidelines for coping with issues of finding the optimum size of a court based on judges' productivity. Following this principle, in one of the two examples shown at the end of the paragraph we obtained two new offices $A_1$ and $B_1$ with around 60 judges each. Now, let's put the case that the analysis of historical flows of proceedings shows that court $A_1$ gets 12.000 cases per year, and court $B_1$ gets 14.400 cases per year, comparable to those of court $A_1$ in terms of difficulty. If both offices effectively perform with comparable productivity, whatever is the level of productivity, we would have either two non-equilibrium cases: in fact, if productivity is higher than 200 cases per judge per year we would have over capacity of the office $A_1$. On the contrary, if we have a productivity of less than 200 cases per judge per year we would have the generation of pending workload at the end of each year in both courts. As a consequence of the above, the ideal solution would be to re-define the competences of the two offices in a way to have nearly 13.200 cases incoming in each of the two offices.

However, an additional issue arises in this case because we need to define how to measure judges' and courts' "workload": does it consist of the incoming cases per year per judge only, or does it include also the pending cases at the beginning of the reference period? Moreover, what are the pending cases to be considered? All those open cases accumulated at the end of the last period, or only those that have not been solved within a given period of time?

The problem is arguable. A possible solution to this issue is that pending cases could be treated separately from incoming proceedings applying special measures. In fact, in an ideal situation if the judicial system reaches the equilibrium in terms of efficiency and productivity, the courts would resolve all incoming cases within a reasonable timeframe reducing to a minimum or even to zero the accumulation of old workloads. In other words, the analysis for the definition of the judicial map should be based on incoming and resolved cases only (where productivity is the ratio of these two factors), and then a special and fixed-term team of judges (or even a special effort by the same judges working at each office) should be assigned to the treatment of the pending cases until the stocks are set to zero.

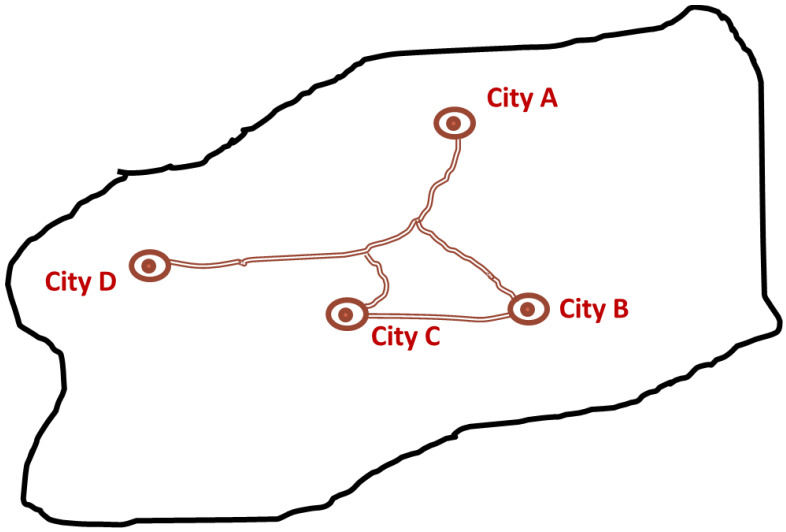
### 2.3.4. Geographical Location and Available Transportation and Infrastructure

In many countries the geographical location of the court may still be very important due to the need to provide access to justice at a local level. Transport needs and the availability of modern means of communication impact on the public's ability to access justice. Where there is a requirement that a party has to appear physically in court the accessibility of the office is critical. It would be unreasonable to expect a party to travel for an excessive period of time. A standard should be established for reasonableness of the travelling time required.

Having to report to a court for a hearing set early in the morning for an elderly person, or for someone who does not have a car, yet in the absence of adequate means of transport for those who need to travel from another city are all problematic situations that may infringe on the right of equal access to justice.

Also in this case when searching for an optimal distribution of the offices, the principle to be applied in terms of localization is that of minimizing the distance between the judicial office and all the municipalities of the territory.

A case sample is provided below, with an imaginary map of a territory with four major cities (A, B, C and D) among which one is to be chosen where a tribunal satisfying the condition of the minimum distance from citizens would be located.




The problem can be resolved by generating a table indicating traveling time by car between the 4 cities. We shall also assume that each city is representative for all small towns around it.

| From / to in minutes | City A | City B | City C | City D |
|---|---|---|---|---|
| **City A** | 0 | 30 min | 35 min | 60 min |
| **City B** | 30 min | 0 | 20 min | 35 min |
| **City C** | 35 min | 20 min | 0 | 20 min |
| **City D** | 60 min | 35 min | 20 min | 0 |
| **Totals** | **125 min** | **85 min** | **75 min** | **115 min** |

Apparently, the optimum location of the office, having to choose a unique place among the four listed above, is City C because it minimizes the distances to the other three cities if compared to all other possible combinations. Of course, this analysis is independent from the number of people moving. However, if, for example, the location City B had a centre much more populated with a much higher number of cases than City C, then in that case the authorities may decide to give priority to City B as the court location.

Indeed, a further element of analysis arises.

Must all services provided within a court remain within the main court? Do we need the full physical presence of a court, even if what most customers need to do is to collect a form or simply file some documentation to start their proceedings?

Staying in the previous example, in the three places which would have no court, it might be useful to establish points of support for administrative tasks, or simply accompany the centralization of offices with an expansion of eligible on-line processes as it will be discussed below in the section on computerisation.

### 2.3.5. Computerisation

As described in the paragraph above, geographical reorganization of the judiciary results in larger travel distances for parties, lawyers and employees, and thus in a possible deterioration of the level of access to justice. It seems, however, that many countries are likely to positively cope with this problem. Part of the explanation is that the physical presence of parties and other participants to trial is becoming less mandatory as the implementation of information technology and video conferencing is gradually becoming a standard in large countries, as well as the participation in a hearing remotely is not seen as a serious obstacle by many operators.

Consolidation of courts though should be accompanied by increased utilization of ICT to reduce the frequency of necessary visits in person by parties and lawyers to the courts[20]. In addition, ICT should be used to increase the visibility of court proceedings. The greater is the availability of software applications that substitute paper and the need of a physical presence on site, the more remote the location of the court could be. When looking at the geographical location for each court, computerisation may provide a degree of flexibility as to what services are provided at each individual court[21].

The use of computers for data processing has helped the management of business organisations to cope with increasing problem of paper handling. The computers have speeded up the process and eliminated the paper needs through the storage of data in elaborately constructed data bases and files. The modern and very efficient storage systems allow saving paper and thus reducing space requirements. In addition, if all judicial documentation is scanned and stored electronically it can also be retrieved through a web connection without the need to visit the court and ask for paper copy or master. In other words, a reform for a modern judicial map can leverage technology in order to reduce the number of offices, provided that consultation or even other basic services such as filing documents or notifying formal acts to parties can be executed on-line.

All advantages of computerisation in the judicial systems are based on the fundamental assumption that the systems employed are secure, and that they guarantee privacy and traceable usage.

### 2.3.6. Court Facilities and Cultural Sophistication

The availability of technology for hearings to be conducted on the telephone or by video conference adds a new dimension to the accessibility of courts. There may be a limit to the types of hearings that may be dealt with in this way, but if legislation accepts the possibilities offered by technology by removing the need for parties and lawyers to attend every hearing then it becomes an element of evaluation when determining the number and location of the courts. Such technology not only reduces the need to travel to court but it also reduces the costs for the parties by eliminating travelling time.

### 2.3.7. Level of Business

The level of business is always a factor, or should be, when deciding on the location and size of the court. The level of business should be looked at in conjunction with the question of resourcing and recruitment. Coupled with this is the need to ensure a certain degree of expertise at the court in the subject being decided. Any exercise of this nature should consider the benefits of centralising hearings to provide greater flexibility to ensure the maximum use of the courts time. Courts that do not have a sufficiently large pool of cases struggle to keep their judges occupied.

However there is one theme that emerges from the assessment on the level of business. In fact, similar to the issue of population served and the relationship with the number of proceedings filed, the number of businesses and professionals in the area may be irrelevant to the size and location of a court since the workload per judge of the court is already included in the flow of cases as referred to in paragraph 2.3.3. However, what we would like to highlight in this section as a guideline is that probably, in the case of alternative venues available for locating a judicial office, and assuming all other factors being equal, it may be preferable to pick the site where the economic activity and trade are most intense.

### 2.3.8. ADR/Mediation

It is important to recognise that alternatives to the court as a forum for resolving disputes are becoming more widely available and may provide a cost-effective alternative to using the court. Although there does not have to be a direct link between the court and the ADR provider, it is invariably the case that they are linked. This service would require the accessibility of trained providers and suitable accommodation, if meetings are to be conducted on the court premises.

[20] European Network of the Councils of Justice (ENCJ), Judicial Reform in Europe Report 2011-2012.
[21] From: Judiciary In Times Of Scarcity: Retrenchment And Reform, By Frans van Dijk and Horatius Dumbrav

### 2.3.9. Availability of Legal Advice

When deciding where to place a court and what jurisdiction it should have, some considerations need to be given to the availability of legal advice. It is probably the case that lawyers will move to areas where there is sufficient business to justify a presence. This willingness to move cannot be assumed, and adequate precautions have to be made to ensure the users of a court have access to appropriate legal advice.

### 2.3.10. Recruitment of Judges and Staff

We have already seen above in this document that a careful assessment may be required to establish the number of judges and the sitting patterns to meet the need in the workflow. But additional elements must be considered. To establish a court within a reasonable distance from a law university site is very important especially in those countries where culturally people prefer to work very close to their home-town or to the place where they graduated. Moreover, in many countries there could be areas or single cities in which people, and as a consequence judges, may not be willing to live, creating preconditions for an unstable organisation with a high rotation of judges and a negative impact on the quality of work.

Not only is there a need to ensure that a court has sufficiently trained and experienced judges, but a court also needs to have the required number of administrative support staff for the business being generated.

The difficulty in recruitment and retention of staff is a major obstacle to providing high quality and efficient court services. It is the case that courts based in major cities may have the worst performance records, because the staff is not of the same quality as in provincial courts. The reasons for this are various but would include the lack of a competitive salary, more employment options and the high cost of housing. The geographical location of the court and the way it delivers its services may be influenced by this problem, and appropriate alternative methods may have to be found in order to ensure that access to justice is provided. In the process of establishing the difficulties of poor recruitment and the countermeasures to be employed the benefits of having well trained and experienced staff should also be considered.

As we have seen in the paragraph dedicated to computerisation, modern judicial systems require new competences in order to deal with the modern world where both litigations and crime become more and more sophisticated. Justice strongly needs to recruit more educated people possessing not only legal expertise but also managerial approach, goods and services purchasing skills, knowledge of new investigation technology (wiretapping, other interceptions etc.), IT competencies and knowledge of foreign languages.

## 2.4. How to Use Indicators in Order to Define New Judicial Maps

This document describes multiple factors and criteria to be considered when designing a judicial map. Although not all of them shall be considered in all situations, it is highly recommended that a sufficient number of different indicators are utilised when defining a judicial map.

In France the necessity to adapt the justice to the evolution of economy and population resulted in the need to use a large number of indicators and data (e.g. demographic data, indicators of quality of the decisions, number and type of cases, number of appeals, processing time etc.). The jurisdictions have been categorized in homogenous groups by grade of judgment and size of court, hence each category was assessed and analysed by the same criteria. In Italy the key indicators used were the population (to be noted that a general population census was carried out in the country in 2011), workloads mostly based on the number of incoming cases, judges' productivity, followed by the surface and distances in terms of travelling time.

A slightly different logic was applied in the Netherlands where the focus of the reform was on enabling the reorganisation of courts' geography in a way to group larger number of cases regarding the same field and therefore facilitating the courts' and the judges' specialisation.

In Portugal and in Italy the reform establishes rules for determining whether the closing down of courts is justified or not. In Portugal, the notions of efficiency and rationality are very important; however, since the reform was implemented in only three jurisdictions and it has not yet been extended to the rest of the country, no real protest arose. On the contrary, in Italy where 949 first instance offices will be closed, the reaction from local authorities, bar associations and operators is very negative.

As perfectly summarized by the Sciences Po Strasbourg Consulting in their *Comparative study of the reforms of the judicial maps in Europe (2012)*, each country used a variety of criteria to ensure the most pragmatic appreciation of each court situation, but there is no denying that in fact the activity level of the jurisdictions prevailed, even though it was, nonetheless, toned down by other considerations such as geographical/temporal distance or the necessity for justice to be present in some areas. This is the case for three tribunals in Italy, located in the south of the country (the tribunals in Caltagirone, Rossano and Sciacca): although they had been earmarked for closure on the basis of their dimension and performance, they were subsequently 'rescued' because they are in the front line of the battle against Mafia. Nevertheless, there are also countries like Germany where, in addition to the quantitative and qualitative factors listed in this document, other influential background factors, such as the historic reasons, would be considered by reformers before taking a decision on closing down a certain office rather than another one.

Nevertheless, the general trend is that courts with the fewest judges dealing with the lowest numbers of cases are targeted and closed down during judicial map reforms. However, whatever the number of indicators selected, the question for reformers is how to assemble them in order to come up with the list of offices to be eventually closed down.

The following example will show that at least two selection criteria, one more restrictive and the other less, may be followed.

We assume that in the region *XYZ* there are 10 courts (Court A to Court J), and that their number is to be reduced. The policy makers consider the possible elimination of a number of offices using the general criterion of the smallest population served, lower litigation and productivity. Thus, the factors to consider are:

1. Population served
2. Number of new filed cases (measured in relative terms of rate of litigation, in connection with Factor 1)
3. Productivity of judges.

Below is the table with a set of minimum data necessary to conduct analysis for the purposes of the review.

| | **FACTOR 1 Population** | **New Filed Cases (INPUT) (comparable)** | **FACTOR 2 Litigation (cases filed per 100.000 inhabitants)** | **Cases Completed (OUTPUT)** | **FACTOR 3 Judges' Productivity** | **Number of judges** |
|---|---|---|---|---|---|---|
| **Court A** | 100.000 | 1.100 | 1.100 | 1.050 | 105 | 10 |
| **Court B** | 120.000 | 1.000 | 833 | 1.000 | 83 | 12 |
| **Court C** | 80.000 | 850 | 1.063 | 800 | 114 | 7 |
| **Court D** | 200.000 | 1.800 | 900 | 1.850 | 103 | 18 |
| **Court E** | 180.000 | 1.500 | 833 | 1.500 | 88 | 17 |
| **Court F** | 200.000 | 2.300 | 1.150 | 2.250 | 113 | 20 |
| **Court G** | 190.000 | 2.000 | 1.053 | 2.050 | 103 | 20 |
| **Court H** | 50.000 | 300 | 600 | 250 | 50 | 5 |
| **Court I** | 30.000 | 300 | 1.000 | 280 | 70 | 4 |
| **Court J** | 150.000 | 1.500 | 1.000 | 1.500 | 107 | 14 |

The reformers decide that the offices to be included in the "possible suppression list" are those falling within the lowest first quartile i.e. the worst 25% offices for each indicator utilized, as highlighted in bold font in the table below.

| | FACTOR 1 Population | New Filed Cases (INPUT) (comparable) | FACTOR 2 Litigation (cases filed per 100.000 inhabitants) | Cases Completed (OUTPUT) | FACTOR 3 Judges' Productivity | Number of judges |
|---|---|---|---|---|---|---|
| **Court A** | 100.000 | 1.100 | 1.100 | 1.050 | 105 | 10 |
| **Court B** | 120.000 | 1.000 | **833** | 1.000 | 83 | 12 |
| **Court C** | 80.000 | 850 | 1.063 | 800 | 114 | 7 |
| **Court D** | 200.000 | 1.800 | 900 | 1.850 | 103 | 18 |
| **Court E** | 180.000 | 1.500 | **833** | 1.500 | 88 | 17 |
| **Court F** | 200.000 | 2.300 | 1.150 | 2.250 | 113 | 20 |
| **Court G** | 190.000 | 2.000 | 1.053 | 2.050 | 103 | 20 |
| **Court H** | **50.000** | 300 | **600** | 250 | **50** | 5 |
| **Court I** | **30.000** | 300 | 1.000 | 280 | **70** | 4 |
| **Court J** | 150.000 | 1.500 | 1.000 | 1.500 | 107 | 14 |

If more restrictive criteria are applied, 4 courts (B, E, H and I) would be eligible for suppression because they fall in the worst quartile of at least one indicator, while applying a less restrictive approach only one office would be eligible (Court H) because it is the one included in the first quartile for all indicators.

But what if the intention of the policy maker is to propose the closure of the 25% of offices, i.e. it is necessary to selection two offices out of the listed ten? In this case there is another criterion that would combine the three indicators into a single one, possibly by utilising normalising factors (otherwise it would be difficult to sum-up population and productivity) and assigning weights to each factor, based on the assumption that they have different impact and importance. Then, from the final rank obtained through this exercise the reformer would choose the two worst performers to be suppressed.

## 3. Implementing the judicial map

### 3.1. The transition phase

Whether the revision of the judicial map consists of creating new judicial offices or of closing some offices and subsequently merging them into other courts, particular attention should be paid to the transition from the situation prior to the reform until several months afterwards.

During this Transition phase the aim is to:

- Effectively start-up the judicial services, ensuring continuity.
- Take care of the transfer of staff from the suppressed offices to the merged ones and, if necessary, to recruit additional human resources for the new offices.
- Organize the logistics of the new offices (space, equipment, IT, supplies, etc.).

The Transition activity should be broken down in distinct phases and managed according to a well-defined project plan. From this point of view, it would seem appropriate to set up special work-teams dedicated to this activity within each court concerned.

The achievement of the objectives set for the Transition phase shall be pursued while:

- Minimizing the risks related to the judicial activity being discontinued.
- Minimizing the impact on service-users.
- Ensuring that all activities are conducted within a reasonable timeframe, according to satisfactory levels of performance.

Implementing a new judicial map has its cost. There is a cost of a feasibility study before the reform, and there is an even more significant cost of implementing the new judicial map: closing offices, transferring people, moving documentation, furniture and equipment, hiring new staff, etc. Reformers and policy makers should not conceal this aspect but rather take it into account when facing the overall evaluation. Moreover, if the objective of the reform is to save costs, it is important that reformers prepare a business plan in which they can evaluate the net return over the medium or long term.

### 3.2. People transfer

Depending on the decisions taken by the reformers and on the legislative constraints existing in the field of labour law, it is possible that a number of staff and judges would have to be transferred from one court to another as a result of implementing the new judicial map. For example, according to the Italian law applied in the public sector, none of the 7.000 staff and 2.300 magistrates affected by the judicial map reform of 2012-2013 will lose their jobs. Nevertheless all of them will need to change the location of the office.

In this regard, special attention should be paid to official announcements regarding the implementation of the judicial map, as long as these messages reach a specific group of people directly affected by the change. While preparing the communication plan the objectives should be:

- To promote a positive reaction to change, ensuring that all those involved are aware of the new judicial map, understand it and perceive it as positive.
- To contribute to stabilizing the psychological climate and motivation of the staff.
- To ensure the consistency of information given over time and to reduce the risk of spreading misleading messages from "unofficial" sources.
- To allow a correct and timely delivery of the messages, gradually providing answers to all reservations of the various parties concerned by the reform.

In addition to the communication a plan must be developed to ensure that operational activities are taken up by the transferred people in an effective and efficient manner, including:

- Assignment of the role and tasks to each person transferred within the new court.
- Management of all administrative duties (entry badge, working hours, IT systems enabling policies, etc.).
- Evaluation of potentially disputable issues related to the terms and conditions applied.
- Guarantee the process of paying the salaries.

### 3.3. Measuring the impact of the judicial map reform

Many interventions in the public administration sector fail to evaluate their impact. It is important that reformers do not declare the objectives of their reforms without defining how and when such goals will be achieved. For example, typical strategic objectives set for judicial systems before undertaking a judicial map review are those to increase efficiency, to enhance specialization, or even to improve the overall performance of the judiciary.

In the view of the European Network of the Councils of Justice (ENCJ), consolidation of courts must be based on the need to provide for a higher quality of justice, and not solely on the need to save costs[22]. Judiciaries should evaluate carefully whether net cost savings can indeed be achieved by merging courts, and must take into account that it may take many years before the desired savings are effective[23].

This paragraph focuses on some basic principles to be applied in order to measure the achievement of the goals set for the judicial map reform.

First of all, reformers must draft statements associated to the judicial map review that describe specific objectives to be reached by the judicial system through the reform. The goal statement should explain in detail the desired accomplishments and include all considerations, such as how long it may take to accomplish each goal. The goal must be measurable from the beginning and, ideally, some evidence should be available also from the years before the reform for comparison with future data in order to verify whether the results achieved are indeed effects of that reform.

Policy makers should then determine all of the specific project deliverables for each goal before any judicial map programme is started. This can serve to ensure that the progress toward a particular goal may be measured effectively.

Nevertheless, data are not enough. Reformers indeed must develop and choose a set of Key Performance Indicators (KPIs) that may be used to measure progress. The KPIs shall provide methods by which the progress toward the objectives of goals is measured. The most effective indicators are those that can demonstrate efficiency gains, performance improvements and, where possible, key qualitative aspects.

[22] European Network of the Councils of Justice (ENCJ), Judicial Reform in Europe Report 2011-2012.
[23] From: Judiciary In Times Of Scarcity: Retrenchment And Reform, By Frans van Dijk and Horatius Dumbrav.

The CEPEJ report “European judicial systems” lists over one hundred different KPIs that can be used in order to measure the effectiveness of the implemented reform and also its success, e.g. financial indicators such as the cost of justice per inhabitant; indicators of the level of access to justice such as number of courts and magistrates per inhabitant; performance indicators such as disposition time, clearance rates; moreover, qualitative surveys such as customer satisfaction indicators that can measure perception of the reform by the citizens themselves.

Once KPIs are defined and objective values are set, they should be measured regularly in order to see if reforms are deploying the effects in line with the pre-defined goals. In this sense it is important that the KPIs chosen can be used as evidence of progress, and, finally, demonstrate if the reform was useful or not, or at least how useful it was.

In an ideal system, an evaluation team should monitor the progress towards each goal using the KPI statistics. It should check the metrics each month for a period of at least six months, review the results and meet with decision makers regularly to determine how to proceed. In case of non-alignment, the decision makers should define what corrections, if at all possible, to apply in order to realign the actions and the objectives.

## Guidelines on the role of court-appointed experts in judicial proceedings of Council of Europe's Member States

### Introduction

1. The purpose of this document is to provide a reference framework for the legislator, the judge and all parties to a lawsuit as regards the role of a technical expert (hereinafter called "expert"), in cases where the expert is instructed by the court, during the judicial decision process. The definition of a court-appointed expert used in this document is the one provided in the CEPEJ report on European judicial systems[24], according to which technical experts "place at the disposal of courts their scientific and technical knowledge on matters of fact". It is meant to communicate the basic principles concerning the role of the experts in the judicial systems of Council of Europe member states. Furthermore it identifies principles which clarify the legal interpretation and application of the law concerning the work of those experts during judicial proceedings. Those principles apply to all pre-judicial and judicial proceedings in all areas of law; not only in civil, but also in criminal and administrative, lawsuits.

2. The role of experts in the trial or lawsuit is different in some of the member states of the Council of Europe. However, there are also similarities. Usually the experts help the judges and other decision-makers in the judicial system with the decision-making. They support the fact-finding, which is an essential basis for every judicial decision. Sometimes they only support the judge; sometimes they even do their own fact-finding.

3. Objective, correct fact-finding is the basis for a fair and just judicial decision. The experts are either appointed by the court itself or by the party or parties to produce an expert opinion. In some cases they have the task of ascertaining facts. They can also (only) assist the parties in bringing forward evidence. Thus experts either complement the judge's deficient technical knowledge or help with the fact-finding, as long as one party is legally obligated with the reasoning/ giving of evidence.

4. The work of the experts ends where the appraisal of the facts begins, which is the task of the judge alone. This prevails even in those cases where the expert is allowed to direct or conduct the giving of evidence.

5. The work of the expert and his expert opinion are highly important during the lawsuit because of his specialist knowledge of the matter in question, irrespective of the different levels of conclusiveness of the expert opinion. Nevertheless the judge is under no obligation to follow the suggestion of the expert opinion, but the court has to give reasons for an opinion which dissents from the expert's suggestion. Usually the principle of free assessment of evidence prevails.

6. The work of an expert not only requires an extremely high standard of expertise – his/her level of qualification being in accordance to the complexity of the question under examination - but also the expert's independence and impartiality.

7. To meet those high standards and ensure a correct fact-finding process, it is necessary to develop, substantiate and apply rules that not only ensure the instruction of the experts by the court and/ or by the parties, but also guarantee the work of the expert according to constitutional principles.

8. These guidelines set a minimum standard of practice that should be maintained by all experts. Also considered is the fact that there are different legal systems and many different jurisdictions in Europe, which may impose additional duties and responsibilities on the expert.

9. The expert is not allowed to let him or herself be influenced by other interests than giving evidence. All rules concerning the rights of the expert and his/her role in the lawsuit/ court procedure have to follow and comply with this general principle.

10. This is why it is crucially important that there are rules at national level (in the different legal systems) guaranteeing the independence, impartiality and integrity of the expert.

11. At the same time there is need for rules that support the focused conduct of judicial process so that a decision may even be reached in a short and appropriate period of time. Over-long legal procedures are meant to be avoided, because these especially often require a complex fact-finding process.

[24] CEPEJ report on European judicial systems (2012 data), chapter 15.

Furthermore, a straightforward framework concerning the financial impact of the preparation of the expert opinions ought to be provided.

12. The following guidelines are intended to serve and outline these purposes.

13. The aim of these guidelines is not to answer the question whether and under which circumstances the appointment of an expert is necessary in general according to statutes and the principles of procedural law, but to provide criteria for the correct selection and appointment of the expert and for the preparation of his expert opinion and the introduction thereof into the court proceedings.

14. Other public or private expert opinions that have already been produced outside the lawsuit do not enter into the following guidelines – even if they would qualify as a piece of evidence in the lawsuit. The guidelines refer only to the surveying work of the expert - regardless of the concrete description in the particular national legal system. Therefore they are not applicable to cases in which an expert appears as a witness or a professional witness.

15. This document has been drafted by the Working group on the quality of justice (CEPEJ-GT-QUAL) based on a working document by Anke Eilers (member of the Group, Germany) and a study by Gar Yein Ng (scientific expert, Norway) on the role of experts in judicial systems.

## 1. SUBJECT-MATTER OF THE EXPERT OPINION – TASK OF THE EXPERT

16. The expert is required to find and present the court with those facts that can only be obtained by specialists who conduct specialist objective observation. He/she conveys the scientific and/or technical knowledge to the judge which then enables the judge to conduct an objective and clear investigation and evaluation of the facts. The expert is neither able, nor is it by any means his/her task, to take over the judge's responsibility for the appraisal and evaluation of the facts which is the basis for the judgment of the court.

17. The expert is part of judicial decision-making concerning the communication of special knowledge to the court. This special knowledge refers to the investigation, the assessment and sometimes the evaluation of facts[25]. Consequently, the expert is simply an assistant or consultant of the judge, nothing more. The expert's role is therefore different from that of the judge, who is the one deciding on questions of law. The expert provides the court with facts according to his special knowledge, education and experience from which the judge can then draw his conclusions.

18. Even if the expert may play a more prominent part in the legal decision-making in other jurisdictions, he/she should remain obliged to help only with the fact-finding and not with the application and interpretation of the law.

19. Subjects of expert opinions are therefore complete description and explanation of conditions relating to persons and things, description and explanation of events, and also declaration of the (different) causes of a damage-causing event.

20. In some exceptional cases, foreign law may be the subject of the expert's evaluation. At all events it is not permitted that the expert him- or herself ends up applying the law.

21. In criminal trials, the main focuses of the evaluation are questions about the legal culpability and criminal responsibility of the defendant, the personal and economic circumstances of the victim and ascertaining causation issues. In civil or administrative procedures, the evaluation of people, things and the course of events prevails.

22. Because of that, medical, psychological, constructional and economic expert opinions and also those concerning road accidents are highly important.

23. Since the judicial decision often depends on substantive evaluation of the facts, the results of these expert opinions become more and more important for the outcome of every procedure. This also means that it is of extremely high relevance to select the best qualified and most suitable expert.

[25] In some Council of Europe member states, foreign law may be considered as a fact. Consultants may be appointed by the judge (very often from the academic environment) to help clarify certain issues related to the interpretation and application of foreign law and assist the judge with the decision-making process.

## 2. THE PERSON ACTING AS EXPERT

### 2.1 Natural person or body of persons

24. Normally only a natural person can be an expert. The principle is individual and personal preparation of an expert opinion. The reason for that is that the expert in person has to assume responsibility for the expert opinion as regards its content. It is possible for a corporation or institution to be selected initially. Insofar as a corporate body is appointed as an expert, it should nonetheless be ensured that a natural person within such a body takes over responsibility for the content of the expert opinion, signs it or gives a verbal report in court.

### 2.2 Staff / employees

25. It is possible for the expert to make use of employees during the preparation of the expert opinion. They can not only do preparatory work, but can also draft the expert opinion under the instructions of the expert. They have to be properly supervised. However, the employees do not become experts when undertaking certain tasks concerning the preparation and drafting of the expert opinion. Only the person responsible for the expert opinion – the one who signs the opinion – is the appointed and instructed expert. It has to be made clear in the expert opinion – by quoting name, address and contact details of the expert – who this person shall be. The employees are only responsible for their work in relation to the expert. They do not have any rights or duties in vis-à-vis the court. It has to be indicated in the expert opinion how much work was done by employees or assistants during the preparation of the opinion, as long as the work of assistants was not just minor.

### 2.3 Several different experts / replacement of an expert

26. It is possible for the court or the parties to appoint several experts. This depends on the matter under examination. It may also be possible that the expert deems it necessary to obtain a second expert opinion concerning details outside his area of expertise. In this case the court (or the parties) will have to appoint someone for such an expert opinion, or empower the expert to obtain such special knowledge by appointing an expert him- or herself.

27. If several different experts are appointed for one concrete question, they should deliver a uniform expert opinion to the court. Where it is not possible for the experts to provide a uniform expert opinion, they should record precisely those issues in which they are on disagreement.

28. To avoid problems with clarity and simplicity, the number of experts appointed should remain manageable and not become too large. It should be limited to a certain number that depends on the complexity and expediency of the question under examination. This number should be defined by the court or by law. In the event that there are many different experts preparing expert opinions, it has to be clearly and unequivocally visible which expert is responsible for which parts of the expert opinion. Nevertheless the expert opinion has to be signed by each single expert. If one of the experts assumes some of the other expert's tasks, he/she should indicate this clearly.

29. If the expert who has been appointed by the court is not able to conduct the preparation of the expert opinion (e.g. because of illness, insolvency, time capacity or refusal for other reasons), the court can replace the expert with another after having sought the opinion of the parties in the matter.

## 3. SELECTION OF THE EXPERT / SELECTION CRITERIA

### 3.1 Requirements stated by the parties / appointment by the parties

30. The court instructs an expert. It can also ask the parties to make a proposal concerning the person intended to be the expert. If both parties together suggest the same expert, the court should accept this as the main selection criterion, but not be bound by the parties' suggestion.

31. There is no duty on the parties to propose an expert; they only have the right to do so if they so wish. In some exceptional cases, it may be possible to empower the court to refuse both parties' proposal of one expert if this one person is known by the court to be absolutely unqualified.

### 3.2 Appointment by the court

32. Usually the court must appoint the expert without the parties because there is no concurrent proposal for a qualified expert by both parties. Here the court in any case has to appoint the expert according to specific selection criteria. The general principle of the selection should be the qualification of the expert.

#### 3.2.1 Selection criteria

33. The court – either the deciding judge or the administrative body of the court – has to appoint an expert according to the following selection criteria. The compilation of lists of experts (to be checked and updated on a regular basis by the court) meeting these criteria may be very helpful in the selection process; the court should be free, however, to appoint experts not on the list if the circumstances of the case so require.

***Determination of expert knowledge***

34. The expert must possess a suitable qualification and/or the necessary experience or skills. The qualification depends on the area of expertise and on the specific task. Experts from the area of science and research normally have a broad expertise. The expertise can also be gained through practical experience, though. The requirements regarding the qualification of the expert therefore vary according to the different job profiles and the assignment of tasks.

***Factual independence and personal impartiality***

35. The expert has to remain independent concerning the matter under examination and must be impartial concerning the relationship with both parties. He/she should not be allowed to have been appointed by one party to prepare a private expert opinion during the pre-procedural stage. It should also be prohibited for him/her to stand in a close personal relationship with one party so as to suggest a conflict of interests. He/she has to guarantee that his/her opinion is given objectively and not according to potential personal interests.

36. The expert's advocacy of a certain scientific position is generally no reason against his/her appointment. However, in this case it must be possible to introduce the opposite scientific position in the proceedings.

***Time and technical capacity / personal ability***

37. The expert must have the time and the technical devices to conduct the assessment within the case management timetable and in a correct way. He/she also has to be personally able to conduct the assessment and be available for the trial.

***Predictable costs***

38. The lowest hourly rate must not be a selection criterion, because the danger of not appointng an independent and competent expert could easily arise. However, experts' costs should be borne in mind when selecting an expert and be dependent on the amount in dispute. Because of this, it may be necessary to appoint a potentially local expert to minimise the expenses. Moreover, the estimated costs of the expert appraisal should be brought to the parties' attention at the earliest possible stage.

39. If there is no legally prescribed system for the remuneration of court-appointed experts, the average cost of an expert should be taken as a valid selection criterion.

***Forensic experience / occupational expert***

40. The selection of the expert cannot be made dependent on whether the expert has already had experience with judicial assessments. If the court already knows the expert and he/she has proven his capability to the court, it militates in favour of this expert's appointment. On the other hand, it is also important to consider that an expert who is always appointed for the same kind of questions runs the risk of lacking factual independence.

41. Judicial occupational experts can, but need not, be selected.

***Predictability of the outcome of the assessment***

42. Predictability of the outcome of the assessment cannot be a selection criterion. Predictability sometimes cannot be eliminated if the expert upholds a certain scientific opinion. However, it is not permitted knowingly to appoint an expert supporting a certain scientific view in order to influence the outcome of the assessment. In any case, experts should indicate clearly whether they align themselves to a prevailing scientific view and, if not, why they have decided not to do so.

43. Rather, there should always be an effort to appoint an independent expert or a panel of experts who can present all different scientific views and who can then decide for one of them, explaining the reasons to the court and the parties.

***Comprehensibility of the language / nationality***

44. The expert should be able to present his expert opinion in clear and comprehensible language and, where necessary, also in the required official language used in court. He/she should also choose a style of presentation which enables the addressees of the expert opinion – the court and the parties – to understand the statements not only linguistically but also substantively, and enables the addressees to undertake an assessment of evidence.

45. The nationality of the expert, and especially that of the country of the court, is unimportant and therefore not a selection criterion.

***Decisiveness and reference to results***

46. The expert should be decisive concerning the questions that he/she receives and should try to answer the questions and not to leave anything open. It can be assumed that this is usually the case with forensically experienced experts.

***Consideration of all criteria / overview***

47. The selection criteria have to be considered in an overview. The general principle must be the competent, independent and impartial expert who can prepare an expert opinion with regard to a well-regulated court proceeding. Only thus can it be guaranteed that the fact-finding is correct and helpful for the court procedure.

### 3.2.2 Selection procedure / guarantee of quality standard

48. The court has to determine whether the expert has the needed competence and quality standard, thus a general education and a specialised education related to the field of his work so that he/she can determine and find out the facts in question. The expert has to prove his/her competence. In the course of such a selection procedure the following rules should be obeyed:

***Judicial selector / Appointer of the expert***

49. The person appointing the expert can either be the judge who deals with the lawsuit or an administrative body of the court. The expert can either be selected during the core procedure of the lawsuit or in a special, separate procedure. The general principle of the selection procedure has to be guaranteeing a certain standard quality, hence the aim of finding a competent and independent expert with no conflicts of interest.

***Free selection or binding requirements***

50. During the judicial selection process there is the possibility of allowing a single selector a free choice according to the listed selection criteria. Also, it is possible to require that the selection of the expert be directed at pre-selected experts recorded in certain lists.

***Agreed experts***

51. The court – either the deciding judge or the administrative body of the court – can decide to waive the proof of expertise by the expert if it appoints an agreed expert whose general competence was proven to responsible bodies. The selection procedure is thereby facilitated. Scrutiny of the expertise is then no longer necessary.

52. To ensure that this expertise is maintained, there should be regular monitoring of the status of agreed expert. Also, such status should be temporally restricted and a possibility of extension should be provided.

***Experts from the professional chambers***

53. Professional chambers and organisations sometimes have a catalogue of experts. It is possible to refer to those catalogues for the selection and appointment of an expert. Sometimes one can ask these chambers and organisations to make one or more suggestions for experts to the court. This is especially interesting if there are questions concerning unusual and rarely investigated areas of expertise. However, there is no binding effect to those suggestions.

***Other lists***

54. It is possible that experts may be appointed from trade associations created for the purpose of proposing experts. These organisations may improve the possibility of selecting the most appropriate expert, yet due regard should be paid to the guarantees of independence of the expertise they can provide.

***Duty of the court to hear the expert in court before appointment***

55. The expert selected and appointed must always have the possibility to be heard in court after selection and before receiving instructions. He/she must have the opportunity to decline the appointment.

***Duration of the expert's appointment***

56. The expert is only appointed for a given lawsuit and the specific fact-finding in that case. For new questions or a new procedure, there is always the need for a new appointment.

#### 3.2.3 Duty of the parties to hear the expert and right to decline him/her

57. After the selection of the expert in the judicial procedure, the parties should have the opportunity to deliver an opinion concerning the nomination. In this connection the parties can disclose further information concerning the personal relationship of the expert with the parties and concerning the estimation of the expert's expertise and his ability to prepare the expert opinion. Parties who invoke one special reason for refusal have to explain it in detail. The court should be able to decline or change an expert if the reason for refusal is considered well-founded.

58. Valid reasons for refusing an expert can be reasons that imply violation of the principle of factual independence or personal impartiality, e.g. one-sided partisanship, bias or prejudice, a close relationship with one of the parties, conflicts with one party, personal interest in the outcome of the lawsuit or definite lack of competence.

#### 3.2.4 Instruction of the expert by judicial appointment

59. The expert is instructed to become an expert by judicial appointment.

#### 3.2.5 Legal remedies against the appointment for the parties

60. The parties may have the possibility to appeal against the appointment of a certain expert. Thus it can be guaranteed that the principles of independence and impartiality are preserved.

#### 3.2.6 The court's means of control after the appointment and during the selection procedure

*61.* The court or the relevant administrative body should be able to cancel the appointment of the expert during the procedure by discharging him/her. This is important in cases where the ineptitude of the expert was proven later, for example because of personal circumstances that have changed during the procedure such as illnesses, insolvency or lack of factual expertise in the expert's own estimation. Certain countries have found it useful to appoint judges who are specifically in charge of expertise-related matters, including matters relating to the selection of the experts, the failure of the experts to deliver an expert opinion meeting good quality standards, etc.

## 4. REQUIREMENTS FOR THE PREPARATION OF THE EXPERT OPINION (ASSESSMENT) / FORM OF THE EXPERT OPINION

62. The purpose of expert opinions is to be used as evidence in the lawsuit. Therefore it is important concerning the practical handling and the necessary cogency of the expert opinion that there be general rules for the form of expert opinions. This is the purpose of the following rules.

### 4.1 Appraisal order

63. The expert has to state exactly the instructions of the court. It seems to be reasonable that this should emerge from the expert opinion itself if the expert correctly and explicitly refers to the instruction of the court.

### 4.2 Addressee of the expert opinion

64. The expert has to prepare his expert opinion having regard to his (potential) addressee. Concerning the layout and language of the expert opinion, it is essential to know who the recipient is.

65. The addressee is the appointing and instructing party, ie the court or the judicial administrative body, sometimes also the parties themselves. Irrespective of the parties' knowledge, the expert opinion has to be understandable, comprehensible and connected with the consideration of evidence usable for the court.

### 4.3 Fact-finding by experts themselves

66. As far as is necessary for the assessment of the questions put to experts, they have to do their own fact-finding, examine the object or person in question, conduct tests or simulate chains of events.

**Preparation by local on-site inspection or examinations**

67. Regarding these examinations, the expert has to prepare and organise his own on-site visits and must inform the parties and the court about them in advance. He/she also has to leave open the possibility for participation. The procedure has to be transparent for all participants and cannot be biased or one-sided. The general principle of the right to be heard (in court) has to be respected at all times.

**Obtaining additional and supplementary reports or assessments**

68. The expert must inform the court and the parties about lack of personal expertise and obtaining other additional and supplementary reports or expert opinions concerning sub-questions. The expert opinion must explicitly refer to such additional reports or assessments and indicate their contents.

**Requirements concerning the content of the expert opinion**

69. The expert opinion should be coherent, well-arranged, well-structured, scientifically founded and comprehensible. Furthermore it should be consistent and, depending on the definite rules of the area of expertise, new and recent in its assessment.

70. The expert opinion must depict the facts of the case, on which the results of the experts are based, as clearly and correctly as possible. The reasoning followed by the expert should be displayed as appropriate. If the expert has worked with facts established or assumed by himself, he/she has to indicate this.

71. In addition, the expert opinion should include a summary of the conclusions and a precise answer to the questions posed by the court.

**Verbal or written expert opinion / form of the expert opinion**

72. In general the expert opinion is written or electronically produced. According to the court's instruction, it can also be reported verbally. If the expert produces the expert opinion electronically, he/she carries the responsibility for the counterfeit safety of the written form. The court and the parties must be provided with the written or electronically produced expert opinions.

73. The written contents can focus on the following issues as appropriate:

- assignment of tasks
- reference to the judicial appointment (show order for evidence); notifications of examinations, on-site visits, investigation order, participants in the on-site visits and examinations;
- information about employees of other experts;
- scientific proof (literature) or other sources (e.g. technical rules);
- notifications showing which facts or circumstances were examined, established or simply assumed;
- if necessary it should be explained which methods or examinations were applied and, as the case may be, which other methods and theories exist;
- scientific disputes and information about the different results;
- explanation of the conclusions reached by the expert;
- degree of probability and limitations of possibilities for certain assertions.

**Interim report or final report**

74. The expert may prepare interim reports depending on the extent of the assessment. He/she provides at least the court with a final report. Belated additions to the expert opinion have to be possible for the expert within the periods intended for this.

**Production of the expert opinion within a reasonable time**

75. The expert should produce the expert opinion within a reasonable period of time. If the court sets any deadlines for the production of the expert's opinion, he has to meet them.

**Instructions of the court and of the parties**

76. Specific instructions given by the court concerning the production of the expert opinion, that include instructions concerning the content, the procedure and the report of the expert, have to be obeyed. Parties may ask questions on the report for clarification before the matter comes to trial.

77. The court or the administrative body of the court that appointed the expert must have the opportunity to give instructions concerning the specific production of the expert opinion (of the assessment/report).

78. The parties to the lawsuit or trial need to be extensively informed about the instructions of the court that are given to the expert. The general principle of the right to be heard must be adhered to.

79. The court may also ask the expert to draw up a preliminary report, to be submitted to the parties prior to the submission of his/her final report. This practice lessens the risks of omissions or mistakes during the expert appraisal and clarifies the expert's position on a given matter, thereby also decreasing the risk of subsequent litigation over the expert opinion.

## 5. THE EXPERT'S DUTIES

80. The expert has duties that refer to his person (personal duties) and duties that concern the procedure of the assessment itself.

### 5.1 Personal duties

#### 5.1.1 Assessment in person

81. The expert has to produce and report the expert opinion in person. He/she must take full personal responsibility and cannot delegate this responsibility to third persons. This is also and especially the case if he/she uses the services of employees during the assessment.

#### 5.1.2 Independence and impartiality

82. The expert has to be not only personally independent but also independent of the outcome of the lawsuit and also of the interests of the parties. The general principles of independence and impartiality must be obeyed and followed. To be able to achieve those general principles, there are specific general professional principles and rules the expert should comply with.

83. These rules include the following for the expert:

- The expert has to follow his instructions having regard to the current standards of science, technology and experience and with due diligence. He/she must diligently determine the actual background of his professional/technical assessment and explain the results of his assessment in a comprehensible way

- While doing his/her job and his/her assessments, the expert must always beware of the danger of bias and prejudice. When preparing and producing the expert opinion he/she must maintain strict neutrality and answer the questions objectively and without bias (impartiality).

- An expert who has been instructed or appointed in contentious proceedings is not allowed to enter into agreements that could endanger his impartiality, or to make his payment dependent on the outcome of the lawsuit. Also it is prohibited for him to accept other benefits except his fees and expenses.

- An expert should declare at the beginning of judicial proceedings that he/she does not have a common interest with one of the parties, and should not accept instructions in any matter where an actual or potential conflict of interests could exist. Notwithstanding this rule, an expert may accept an instruction in appropriate cases if full disclosure is made to the judge or to those appointing him/her and if these persons explicitly accept the instruction in this situation. If an actual or potential conflict of interests occurs after the instruction of the expert, he/she must immediately notify all interested parties and may have to withdraw from his appointment in relevant cases.

- The expert must report all circumstances that may lead to doubts concerning his independence and his impartiality in this specific expert instruction, e.g. his own bankruptcy or becoming a defendant in criminal proceedings.

84. Courts should also be vigilant as regards situations of monopoly of the expertise. The rotation of experts could be considered as a suitable means to avoid reciprocal dependence and improve experts' independence vis-à-vis the court.

#### 5.1.3 Expert's duty of confidentiality

85. The expert has to safeguard all information concerning the circumstances that he/she determined during his fact-finding and assessment. It is prohibited for him/her to inform unauthorised third persons about the knowledge he/she obtained during his/her assessment work as an expert or to exploit this knowledge for the use of others. The expert has to oblige his/her employees to respect the duty to remain confidential. Also, the duty of confidentiality continues even if the judicial appointment has ended.

#### 5.1.4 Duty of administration of oath

86. To affirm his independence the expert must give a public guarantee. This usually happens through the administration of the oath concerning his duties. In case the expert is agreed, he/she may swear impartiality only once.

#### 5.1.5 Duty to regularly update his knowledge

87. The expert should possess and maintain a high level of technical and professional knowledge and/or practical experience in his professional field. He/she should keep up his knowledge not only concerning his expertise but also the principles guiding the expert's activity. He/she should undertake professional training and educational qualifications on a regular basis on these issues. In certain countries, experts also have the duty to undertake training on the rules of procedure concerning the expertise and the role of the expert, as well as on conditions of the expert's participation in hearings and presentation of his/her expert opinion.

### 5.2 Procedural duties

#### 5.2.1 Duty to render an expert opinion per se

88. From the moment of his appointment, the expert is obliged to render an expert opinion. He/she can only be freed from this duty if he/she is excused from producing the expert opinion. He/she has to limit him- or herself strictly to conducting the production of the expert opinion and not deliver legal advice to the parties or undertake legal evaluation vis-à-vis the court.

#### 5.2.2 Correct procedure

89. The expert should conduct the assessment under a proper and correct procedure. He/she is bound by the instructions received. He also has to inform all those involved – the parties and the court – about his examinations and planned actions. Furthermore he/she has to give them the opportunity to participate when appropriate. The general principle of the right to be heard has to be obeyed. The expert has the duty to keep and treat the files diligently, to deliver them in time and to document his assessment.

#### 5.2.3 Preparation of expert opinion in reasonable time

90. The expert also has the duty to conduct the assessment and prepare the expert opinion in a reasonable amount of time, at least by the specified deadline. He/she is obliged to inform the court of reasons for an expert opinion not being delivered on the date due. He/she must then also tell the court how long the preparation of the expert opinion will eventually take.

#### 5.2.4 Foreseeable costs of the expert opinion

91. The expert has to let the court and the parties know, before appointment, the foreseeable amount of the costs of the expert opinion. The expert should also inform the parties and the court during the assessment process if the original estimate of costs changes and the costs increase because the assessment becomes more complex and costly than expected.

92. It may be advisable to make the parties aware of the estimated costs of the expert opinion beforehand.

#### 5.2.5 Duty to appear in court

93. The expert has the duty to appear in court and to explain his report verbally if required.

#### 5.2.6 Communication and documentation / notification duty

94. The expert must inform the parties and the court about all steps of his assessment (dates of examinations, obtaining knowledge from others, additional, supplementary expert opinions). In some cases it might also be necessary to obtain the court's and/or the parties' approval regarding the expenditure.

95. The expert carries the duty to store the expert opinion and to report the steps of the assessment. To fulfil this duty he/she may need to describe requirements of examinations, take pictures etc. One can set a time limit on the duty to store and preserve the files.

#### 5.2.7 Duty to take out insurance

96. The expert should (unless the court otherwise directs) take out appropriate insurance with a reliable insurance company that provides an adequate insurance coverage. The expert should maintain this insurance during his period of investigation.

## 6. THE EXPERT'S RIGHTS

97. The expert has both rights in respect of his person and rights that concern the procedure of producing the actual expert opinion.

### 6.1 Personal rights

#### 6.1.1 No right of appointment

98. The expert has no right vis-à-vis the court and/or the parties to be appointed.

#### 6.1.2 Personal right to refuse appointment if biased or unqualified

99. The expert has a right to refuse his appointment if he/she is not able to carry out assignment impartially and independently or is not sufficiently qualified.

#### 6.1.3 Right to payment

100. When appointed by the court, the expert has a right to be paid for his work. This payment has to cover the expenses incurred and the cost of labour. The payment has to be foreseeable regarding the amount, must correspond to general standards, cannot be individually negotiated and has to be adjusted to the quality and complexity of the assessment and the expenditure of time and effort for the specific amount. The work of the expert has to be reasonably and adequately rewarded to avoid the risk that the expert is tempted to violate his independence. However, there should be no legal requirement as to the level of payment for the assessment. A scale of fees is to be recommended if the court appoints the expert. Also, if the parties appoint the expert to produce an expert opinion during a lawsuit, payment of the expert should meet the general principles of proportionality, reasonableness and predictability.

101. The payment of an expert appointed by the court may be measured by hourly rates. The payment does not depend on the results of the assessment. It should be also independent of the sum in dispute. The general principles of neutrality and objectivity of the expert can only be adhered to by this way.

102. Apart from that, the hourly rates of the expert depend on the area of expertise and also take account of the expert's qualification. Under some circumstances it may also be permissible to differentiate regarding the complexity and the degree of difficulty of the assessment.

103. Legal aid schemes should include the costs of expert opinions among the same rules as for lawyers when required by the matter at issue.

#### 6.1.4 Right to payment in advance

104. The expert who has been appointed by the court should have a right to payment in advance depending on the extent and importance of the assessment. In a civil case the parties are usually obligated to allow payment in advance according to the principles of general procedural law.

105. As soon as the expert has given a complete and proper expert opinion, he/she has the right to full payment[26].

#### 6.1.5 Reimbursement of expenses

106. Court-appointed experts' rights include payment of a claim for refund. However, this claim only refers to the necessary costs, for example travel expenses, costs for copying and telephoning, as well as costs for computer software, examinations or other costs for special equipment and costs for employees.

#### 6.1.6 Accounting

107. The expert also has the right to balance accounts with his/her client after he/she has finished his work as an expert. If the court appointed the expert, he/she has to request determination of his/her fees and expenses by accounting.

108. The client (the party) has to refund the fee and must reimburse the expenses. If the expert has been appointed by court, the treasury must pay. In civil law proceedings, these costs normally become costs of the lawsuit that have to be paid by the parties according to the general law of costs.

### 6.2 Procedural rights

#### 6.2.1 Right to receive directions from the court or the client

109. The expert has a right to receive directions as to how he/she should deliver the expert opinion. In addition, he/she has a right to be informed about and advised of his/her personal duties and procedural duties. The judge can and should assist when necessary and when the expert asks for support.

#### 6.2.2 Right of access and right to information

110. To be able to conduct a proper and correct assessment, the expert must have the right of access to all objects, persons and events that are being examined and evaluated. A copy of the original of the

[26] Payment of the final costs of the expert appraisal by the parties depends on the legal solutions identified in each member state.

evidence order or the examination should be sent to the expert. If the expert is refused an opportunity to examine this, it could prevent him/her from fulfilling the duty to produce an expert opinion.

111. It is recommended that the court send the expert for feedback a copy of the decision in the case in which the expert provided assistance.

## 7. POSSIBILITIES FOR FOLLOW-UP TO THE EXPERTISE AND SANCTION IN CASES OF BREACHES OF DUTY

112. The duties of the expert are of high importance for the complete lawsuit, especially the duty to produce the expert opinion within a reasonable time. It is known that the cause of excessive length of proceedings is often lengthy taking of evidence, especially obtaining expert opinions. For this reason, it is of the utmost importance that the judge and/or the court registry follow up the assessment process and intervene in case of delays in delivering the expert's report.

113. Also, unpredictability of the costs arising from the appointment of the expert is a reason for the court and the parties to exert pressure on the legal proceedings.

114. Breach of the expert's duty to produce a factually correct expert opinion that meets the actual circumstances ultimately carries the danger of a wrong judicial decision.

115. Furthermore, it is important that the expert abide by his general personal and procedural duties.

116. Therefore possibilities of sanction that support compliance with duties must exist. One has to differentiate between the possibilities of sanction for the court and for the instructing administrative body and the parties.

117. A potential means of sanction could be forfeiture of payment, release from the assessment, disqualification as an agreed expert, an administrative fine or an arrest, criminal proceedings, disciplinary consequences or damage claims.

118. As mentioned earlier under chapter IV f), certain countries have found it useful to appoint judges who are specifically in charge of expertise-related matters, including selection of the experts, breach of a duty by the expert, etc.

### 7.1 Possible court sanctions

#### 7.1.1 Possible sanctions for breach of personal or procedural duty

119. Depending on the breach of duty, criminal proceedings or regulative legal consequences can arise. If experts violate the obligation of confidentiality or do not appear in court to report results and present the expert opinion, they are in breach of the duty to inform the court or the parties. An administrative or disciplinary fine may be incurred for making false declarations about personal qualities. In more severe cases. There may even be the possibility of criminal proceedings.

120. Under certain circumstances, depending on the breach of duty, a the expert's final exemption from the assessment in this single case might be possible. However, there are no effects on the probative value if the expert remains under instructions to produce the expert opinion.

#### 7.1.2 Possible sanctions in cases of incorrect / unqualified assessment

121. In several cases, the court or the parties must have the opportunity to ask the expert questions and insist upon the completion of the expert opinion. This is especially the case if the expert prepares an expert opinion which is incomplete, unclear, ambiguous and objectively incorrect, not up to date, without any scientific evidence, or if he or she fails to fulfil the instructions to produce an expert opinion or proves not to be competent. In case of gross negligence, the expert may incur liability.

122. If it is proven during the judicial legal proceedings or later that the expert has completed his expert opinion in a way which is not objectively correct, the court has no claim for damages.

123. If an expert is discovered to be permanently unqualified because of lacking expertise, the status of agreed expert as expert may be refused or can also be revoked.

#### 7.1.3 Possible sanctions for expert opinions not completed in time

124. If the expert does not complete his expert opinion within the stipulated time, it should be possible to impose a fine on him/her. In very severe cases of breach of duty, it should be possible to withdraw the expert from the appointment.

125. However, there are no effects on the probative value of the assessment if the expert hands it in behind schedule but remains to be appointed for the production of the expert opinion.

126. Also, it must possible for the court to reduce the payment in very severe cases where the expert is to blame for the delay.

127. In all eventualities the court should have control over the deadlines that were given to the expert.

### 7.2 Possibilities for the parties to impose sanctions

#### 7.2.1 Right to refuse the expert

128. If the expert breaches his/her duty to remain independent, it has to be possible for the parties to request the judge to decline him/her because of bias. In the context of the discussion whether to refuse the expert, the parties have to justify the expert's lack of independence for whatever reasons.

#### 7.2.2 Right to a new expert, a second expert opinion

129. Beyond that, the parties must have the procedural right to deliver an opinion concerning the expert opinion, to question the expert and to substantiate their own reasoning/giving of evidence with a private expert opinion or with a principal judicial expert's opinion. Only the court - and not the parties themselves – has the right to communicate directly with the expert

#### 7.2.3 Damage claims in cases of culpably incorrect factual assessment

130. In some specific cases in which the expert has culpably failed to conduct a proper and correct assessment, the parties may have damage claims against the expert.

131. In these cases it will usually be necessary that the expert has prepared his expert opinion wrongly with intent or wilful negligence. For the degree of fault, the assessment itself will count.

132. The damage claims against the expert can be settled in a separate procedure. Notwithstanding that, the parties can also bring normal legal proceedings against the expert.

#### 7.2.4 The expert's duty to insure against damage caused

133. To be able to enforce possible damage claims of the parties, it might make sense to place a duty on the expert to be insured for any case of liability (liability insurance).

## 8. EFFECTS OF THE EXPERT OPINION IN THE LAWSUIT OR TRIAL

### 8.1 Binding effect of the expert opinion

134. The expert opinion is not binding on the court or on the parties. The court evaluates it freely. The court must verify and determine whether the expert opinion is objectively convincing. In so doing, the court has to consider all objections that have been made against the expert opinion by the parties.

135. The expert opinion is introduced into the judicial proceedings by written submission or by verbal explanation during the lawsuit. The parties and the court must have the right to ask the expert questions. The expert is obligated to give his opinion in the matter and may have to report an additional expert opinion. Discussion of the content of the expert opinion with the expert can be actuated by introducing and opposing it to private expert opinions already available or still to be obtained.

136. However, the way to question the expert is different from a real cross-examination that can only be conducted with witnesses. The right to question the expert solely refers to an understanding in terms of content and to the control of scientific correctness of the expert's statements.

### 8.2 Probative value

137. Basically the expert opinion should have the same probative value as other evidence. If the expert opinion is not meant to function as a piece of evidence in the lawsuit but the statements are only meant to help the actual understanding of the judge, the expert's statements have no mandatory binding effect. The judge has the possibility to diverge from the expert's presented position and understanding if he/she has reasonable reasons to do so.

**PERSPECTIVE**

138. According to the principles developed herein, every member state of the Council of Europe should either introduce legal regulations concerning the rights and responsibilities of experts in judicial process or control, or review whether the existing guidelines in the matter meet the prescribed minimum standards of the rules of conduct for experts.

## Guidelines on the organisation and accessibility of court premises

### Introduction

1. Improving the efficiency and the quality of the public service delivered by the justice system, in particular vis-à-vis the expectations of the justice practitioners and users, is a central element of the action of the European Commission for the Efficiency of Justice (CEPEJ). Its Working Group on the Quality of Justice (CEPEJ-GT-QUAL) is inter alia tasked to "draft concrete solutions for policy makers and for courts to improve the organisation of the court system" as well as the good functioning of the latter, including from a material and logistical viewpoint.

2. The purpose of this document is to provide a reference framework which could be of use to administrators and decision-makers for the construction of new court premises or the conversion of older buildings. These Guidelines apply to all branches of justice.

3. The CEPEJ believes that it is essential that plans to build or renovate court premises be drawn up in such a way as to ensure the delivery of high quality justice and take into account the users' expectations.

4. In particular, it is important for such premises to guarantee the tranquillity required for judicial debate. Accordingly, there are specific features of court premises which differ from those of an administrative building.

5. Public access to justice must be facilitated by improving reception in courthouses, in particular for persons with reduced mobility. The access to information by court users through IT must be encouraged. A further objective is to ensure that judicial staff benefit of good working conditions. It is also important to put in place security arrangements commensurate with the nature of the associated risks.

6. The construction of court premises should also allow for the concrete exercise of the defence rights or the detainee's rights.

7. The present document offers a series of guidelines for identifying the factors to be taken into account, with a view to enhancing the quality of the public service provided and facilities for accommodating the public.

8. This document has been prepared by the CEPEJ Working group on the quality of justice (CEPEJ-GT-QUAL) on the basis of a working document drafted by Gilles Accomando and Michel Perchepied (scientific experts, France).

### 1. A REAL ESTATE POLICY FOR COURT PREMISES

#### 1.1 Understanding the real estate situation

9. This presupposes, as a first stage, an inventory of court premises, followed by an assessment of how they may be adapted to needs.

10. Compiling an inventory of existing premises will make it possible to initiate a real estate database, containing the following information:

    - Main features: address, status, owner, land registry references, date of construction, composition, number of floors, etc.
    - Planning information: applicable regulations, protection requirements, easements, etc.
    - Surface areas (land, buildings)
    - The use to which they are put
    - Staff

11. The next stage is to assess the condition of this real estate from a technical, regulatory, economic and functional point of view.

12. The technical assessment will review the various components of the building in order to classify their condition and how long they can be expected to remain (walls and roofing, technical equipment, internal and external layout); the regulatory assessment will establish the situation of the building from the point of view of the legal obligations to be complied with concerning premises open to the public (accessibility for

people with disabilities, health and safety, physical security); the economic assessment will focus on the costs relating to rent and taxes, utilities, maintenance and operational costs; and the functional assessment will analyse the geographical and urban context of the building, its general organisation, public areas, areas reserved for users and secure areas.

13. These assessments should be carried out by visits to the premises, questioning the court managers and collecting financial data and reference documents concerning the functioning of the building. They may be supplemented by thematic audits in accordance with the priorities that have been identified.

14. The results of the assessment will be added to the database.

### 1.2 Prospective analysis of the activity

15. This analysis will be based on the judicial map and any changes that may be planned. The CEPEJ has produced guidelines for the creation of judicial maps (CEPEJ(2013)7Rev1). Several factors must be taken into account in order to achieve the best compromise between the activity of the courts and closeness to users: population density, size of the court; case-flow and geographical location.

16. This revision of the judicial map must be based on objectives designed to improve access to justice, efficiency, enhance specialisation or improve overall importance, in the light of performance indicators. These indicators are of different types: financial, such as the cost of justice per inhabitant, access to justice, such as the number of courts per inhabitant, and performance-related (length of dealing with the number of pending cases). They may also be qualitative, with indicators of satisfaction among court users.

17. The overall prospects regarding functional trends in the organisation of the courts must also be incorporated where these are known – for example the reorganisation of jurisdiction between the courts.

18. Where there are no changes to the judicial map, it is a question of identifying the target staffing levels and therefore the theoretical surface areas needed in the medium and long-term, based on statistics on staff levels and court activity, and on demographic projections.

19. These simulations can be carried out using different geographical scales, depending on the available demographic projections.

20. The method can be refined to distinguish trends in staff categories or by type of court.

### 1.3 Drawing up a real estate master plan

21. By incorporating the parameters derived from the assessment of buildings and the shortfall between existing and theoretical surface areas, it is possible to identify the priority action to be taken in terms of real estate.

22. More precise feasibility studies and in-depth technical audits may be carried out on these sites to specify the work schedule to be implemented and to estimate the related costs.

## 2. CONSTRUCTION OR RENOVATION: THE CHOICE TO BE MADE.

### 2.1 The choice criteria

#### *2.1.1 Anticipated future activity*

23. Following the prospective activity analysis, it is essential to assess whether or not the existing surface areas can satisfy needs. If they cannot, then it will be necessary either to construct new premises or extend existing ones.

#### *2.1.2 Grouping of various sites in one location*

24. Grouping different courts into a single site provides for improved citizen access to the public service of justice. It also enables optimum use to be made of common spaces.

25. The overall surface area of the courts in a town or city will consequently be significantly reduced in the case of a court complex grouping all the courts together compared with a town or city which has one building for each court.

26. Depending on the court tradition in each country, if certain courts have their own specific identity, then having different sites is not necessarily an obstacle to access to justice.

27. Grouping different courts together often necessitates the construction of new buildings. The conception of such buildings, moreover, is more complex as they may also be used for dealing with criminal cases involving the bringing in of detainees who have to be routed through special secure channels.

#### *2.1.3 The condition of the building*

28. A technical assessment of the building is a key factor. When the work involved concerns the very structure of a building, the cost comparison between renovation and a new building would tend to favour the latter.

29. A detailed technical analysis of the possibilities of reusing the building should be carried out, together with an architectural, economic and functional feasibility study.

#### *2.1.4 Adaptation possibilities*

30. Courts are often buildings of historical interest and as such are protected by regulations restricting the alteration work that can be carried out.

31. While adapting old buildings – rooms with high ceilings, wide corridors, etc. – to the new requirements of justice may be technically feasible, it could give rise to additional costs in terms of both construction and use.

#### *2.1.5 Location*

32. Court premises are often located in town centres where it is rare for there to be land available for extending the building. In addition, the cost of land is often significantly higher.

33. Constructing new buildings presupposes acquiring or having available relatively large areas of land which are often to be found only in areas lying outside town centres. In choosing sites, it is important to consider the urban development prospects in the medium and long-term for the town and the neighbourhoods concerned: relocation of poles of attraction, changes to transport networks and urban development plans. Excellent public transport links and proximity to public parking areas are particularly important.

#### *2.1.6 Maintaining the continuous operation of the courts*

34. Renovation presupposes either maintaining the activity on-site or finding temporary off-site solutions (see under 6 below). These arrangements may be complex and costly to implement and must be studied at the same time as considering the final real estate solutions.

35. If a new construction is opted for, it has to be determined whether the existing sites can be maintained during the building phase and whether they have the capacity to deal with the case-flow. In particular, the courts located in areas where there are significant demographic developments may encounter difficulties if too much time elapses between the planning and implementation phases of the project, for example for budgetary reasons.

#### *2.1.7 Taking account of budgetary resources*

36. The advantage of renovation work is that is can be done in phases whereas all the work involved in a new construction has to be fully financed in order for it to have the desired benefits.

37. In addition to the spreading out of the financial impact, phasing also makes the problem of interim alternative accommodation somewhat easier.

38. This phasing of the work has to be spelled out in the architects' specifications and the study phase must cover the whole work to ensure consistency between the initial stages and the final project.

39. Nonetheless, the work cannot be spread out over too long a time as changes in the regulations or in needs may call into question the validity of the initial project.

40. It is therefore very important, in the light of all the needs identified in the assessment stage and quantified in the feasibility stage, to specify the budget allocated to the construction, which will then directly determine the annual volume of work that can be funded, and for how long the investment will be required.

**2.2 Analysis of the criteria and implementation of a real estate policy**

41. The main aspects here will focus on new constructions on the sites which are in the greatest state of disrepair and where constraints are greatest, and considerable restructuring with possible extensions on other sites.

42. Projects will have to be prioritised in accordance with the following criteria: available resources, condition of the buildings as revealed by the assessment stage, the likely adverse impact on operating conditions in the light of the prospective activity analysis, and the size of the court.

43. Certain more minor work for technical or functional upgrading could also be included in this phase and be added to the multiannual work programme.

44. In addition to the planning of remedial work, it also necessary to specify an annual budget for preventive work making it possible to extend the life of the building's technical components and delay remedial action.

45. All these activities will constitute the multiannual real estate programme.

46. The choice between new building or renovation is a decision which can be part of a broader approach than one based solely on the above criteria.

47. The courthouse is prominent public landmark and as such, the construction of a new court building may derive from a desire by the public authorities to group various public buildings together in another location (town or neighbourhood).

48. Conversely, the historic siting of a courthouse in a town and therefore keeping it in the same location may be the predominant criterion underlying the choice.

**3. TAKING THE SPECIFIC JUDICIAL FEATURES INTO ACCOUNT**

**3 .1 The courthouse is a public building**

49. The courthouse is a public building having its own specific features. Like every public building it is subject to certain regulations (fire safety, type of materials used, etc.) not covered in this document, which fall within the architecture field.

**3.2 Judicial symbolism**

50. A courthouse is a building specifically for delivering justice. In the model of the Greek temple which prevailed in the 19th century, courthouses are generally built in an elevated position – a distinct, enclosed and sacrosanct place. This type of building emerged in Europe and also in the United States, and this is the image of a courthouse that remains in most people's minds.

51. Some studies[27] have highlighted the common features of this judicial symbolism and the perceptions of justice to which it gives rise.

52. The classic image of a courthouse with large staircases, huge dark foyers and imposing statues can be intimidating for the public.

[27] GARAPON Antoine, Bien juger, essai sur le rituel judiciaire, Odile Jacob (2010) ; GARAPON Antoine, Imaginer le palais de justice du XXIe siècle, Institut des hautes études sur la justice, 2013 ; MULCAHY Linda, Legal architecture, Routledge (2011); RESNIK Judith, CURTIS Dennis, Representing Justice, Yale University Press (2011)

53. The symbolism of the courts has changed; this reflects the way the very concept of justice has evolved. The aim is no longer to overwhelm the public with vast, dark spaces. In contrast, the trend today is for light in the buildings, easy access for the public and a symbolism which is often less grandiose and more welcoming for the public.

54. Nonetheless, there has to be some judicial symbolism, so that the building can be easily identifiable as a place of justice and as a public space. Particular attention should be attached to the architecture of the entrance façade.

55. Within the courthouse, the need for symbolism is greater in criminal law matters than in civil law due to the increased formalisation of the procedures.

56. However, if from the architectural point of view it is decided that the building should be clearly identifiable as a place of justice from the outside, this will be to the detriment of its subsequently being used for other purposes. If, as a result of a reorganisation of activities, it is decided to relocate, redevelopment of the existing site could prove to be a substantial resource for financing the new premises, but if it is too clearly a judicial building, then this could make any conversion work excessively complicated.

*Two examples of façade of a courthouse: the Strasbourg courthouse (Palais de Justice), on the left, example of a classical façade, and the European Court of Human Rights, on the right, example of contemporary façade.*

### 3.3 Compiling documentation specifically for architects

57. The specific rules recommended by the CEPEJ for new buildings and for renovation work are given below (5 and 6). Whatever the type of construction however, it is important for architects to be informed of how the courts operate so that they can adapt the buildings to the operational and technical needs of the courts. Similarly, users should also be involved in the project.

58. The operation of a court is complex for anyone outside the judicial world. Architects must be properly apprised of all court procedures and the role of each stakeholder.

59. The documentation provided should take account of the specific procedural aspects. The position occupied in the court room by prosecutors or representatives of the prosecution authorities differs from country to country in Europe.

60. The first stage in compiling this documentation could be an analysis of the functional quality of a sample of the existing buildings, in particular in terms of the architecture, functionality, security and maintenance.

61. This means that the project management team must have a functional and technical reference framework, so as to be able to harmonise the construction or renovation of the court premises from the point of view of internal organisation and performance.

62. This document will serve as a basis for drawing up the schedules for consultation of the contractors to whom the work will be assigned.

63. It will also serve as a basis for consultation and dialogue with users so that their specific needs can be taken into account within a common framework.

64. It is important for the final programme given to the architect to include a prioritisation of objectives established by the contracting authority given that implementation of a project requires certain decisions to be taken where there is incompatibility between several objectives, taking account of the nature of the site or the surrounding area, for example. In such cases, these decisions should not be taken by the architect according to his or her own interpretation, but in line with the order of priorities laid down by the contracting authority.

### 3.4 Involvement of users in the project

65. As with any architectural project, users must be involvement in the implementation. In the judicial field, in addition to the opinions expressed by the judges, security officers and public servants who will be occupying the premises, the observations of the lawyers and barristers must also be sought.

66. In the programming phase, it is essential to observe in situ how the activities are organised, and interviews should be held with a sample of users of the building, court staff and law-clerks.

67. Setting up a steering committee and possible thematic working groups will help define needs more closely and ensure that the project is consistent with those needs.

68. It will also be helpful to obtain the opinions of the health and safety committee and the occupational physician.

69. In parallel, a communication plan may also be set up to provide information on the progress made in the project, the arrangements which will improve working conditions and reception of the public, and any disruption during the construction. This could be carried out by mailshot, a dedicated website or regular newsletters.

## 4. CONSTRUCTION OF NEW PREMISES

### 4.1 Accessibility to the courthouse

#### *4.1.1 Simplified access regardless of mode of transport*

70. The choice of site often depends on what land is available or on public development plans. However, in order to facilitate citizen access to the public service of justice, it is essential that the court has good public transport links. It is also essential for there to be public parking nearby, and where possible a drop-off area.

71. Pedestrian access must be free of encumbrances and clearly marked.

#### *4.1.2 Access for persons with reduced mobility*

72. Particular attention should focus on such persons. Raised entrances represent the first difficulty they face, even if there are ramps.

#### *4.1.3 Information on access to the courthouse*

73. The public must be provided with information on access to the courthouse. It is helpful if the court website provides information for citizens on the location of the court, public transport links, opening hours, the layout of the courtrooms, times of hearings, etc.

74. The courthouse must also be clearly identifiable from the public area outside, either from its architectural symbolism, a sign placed close to the entrance such as a flag pole with flags or other external feature, or by a sufficiently large sign on the façade. An information board at the entrance should indicate opening times to the public and there should be a letter box close by for documents which would otherwise be sent by ordinary mail to be deposited when the building is closed.

75. Consultation with the local technical services should also make it possible to study and put in place appropriate signage directing people to the building from the main traffic routes.

### 4.2 Citizen reception

#### *4.2.1 An architecture designed with citizens in mind*

76. When citizens enter a court building, they often feel they are have stepped into an unknown world. To overcome this apprehension that many people feel, the premises should offer reassurance and the reception area should be welcoming.

77. The imposing nature of conventional courthouses conveys to citizens the power of the law and justice system and can be intimidating. Contemporary architecture tends to produce a new type of environment using natural light and a variety of materials. Such buildings help put citizens entering the courthouse more at their ease.

#### *4.2.2 Reception areas*

78. Immediately upon entering the courthouse, the public should find a reception area providing three types of information: where exactly to go, information on the stage reached in the proceedings, and legal information.

79. The reception area for directing people to where they need to go should be able to cater for people both with and without disabilities, for example with reception counters at two levels and audio induction loops for people with hearing impairments. This orientation area could be enhanced by information displayed on monitors showing the distribution of hearings, times or the parties concerned. In addition, the directional signs could be complemented by floor markings (with lines showing the direction to follow) or more detailed signage especially in buildings comprising several different courts.

80. It is essential that reception staff are physically present, so as to answer any questions from court users who may often feel intimidated, and in this way exert a calming influence.

81. There should be a second, confidential reception area to provide information on the stage reached in the proceedings and/or legal information. This area should be occupied by dedicated staff or on a rota basis organised among the different departments, lawyers and outside associations in specially designed areas able to accommodate one or more people.

82. In each courthouse it is essential to specify the tasks to be carried out by the reception services and to assign competent staff to those tasks. It is essential that reception staff are physically present, so as to answer any questions from court users who may often feel intimidated, and in this way exert a calming influence.

83. The information provided should dovetail with that available on a website or given over the telephone.

#### *4.2.3 Signage and display of practical information*

84. Signage is of particular importance in a court building, especially as citizens often feel out of their depth in coping with procedures and even more at a loss in finding their way around.

85. Practical information on the scheduling of hearings should be displayed using information panels on monitors.

86. In the larger courts, reception staff should provide the public with a leaflet showing the plan of the various departments. In addition, it is helpful for the public if reception and guidance staff are available beyond the reception area.

### 4.3 The functional aspects of the building

#### *4.3.1 Zoning*

87. There should be three main zones, the first for reception of the public, the second restricted to judicial staff and the third a secure zone. Security measures and movement within the building will be specific to these different zones.

### *4.3.2 The areas reserved for judicial staff*

88. The functioning of a court depends on the professional staff working there on an ongoing basis. This aspect is often underestimated in the architectural plan which focuses primarily on the architectural design of the building in terms of the entrance façade, the foyer and the courtrooms. The preparation of a specific document for architects (see 4.3 above) will be of particular benefit for the design of this area.

89. Consultations between the architects and users is even more important for determining the size of offices, where they are located in view of the procedures followed, and the provision of storage and meeting areas.

90. Such areas must satisfy the characteristics common to any office building: fittings, ergonomics, light.

91. First of all, they comprise the professionals' working areas, including office furniture and storage areas for the ongoing files that the person concerned is dealing with, an area for receiving visitors if appropriate, and if necessary, technical equipment (for example, for recording hearings).

92. There can be various approaches to designing these work areas depending on the specific anticipated working methods:

- work requiring concentration on a file which is carried out particularly by a judge will be made all the easier where the space is arranged into individual offices which are well sound-proofed from each other.
- team work will be made easier if there are areas with several workstations, which could even follow the open-plan approach.
- It is also possible to combine the two with individual offices in one part and work areas where working jointly with others is possible in another part. In this case, to optimise the total surface area allocated to workstations, thought could be given to "hot desking" in which a workstation can be shared by several members of staff. An adequate number of meetings rooms must also be foreseen.

93. Each of these approaches has its own technical and ergonomic requirements to ensure a satisfactory working environment.

94. It would also be sensible to determine a typical working area ratio for each workstation in the technical documentation so as to keep this total surface area under control when finalising the programme.

95. The total number of staff to be taken into account must include anticipated changes in the judicial map and the provision of workstations for trainees and non-permanent staff (associations or external services, for example). The percentage to be allocated to offices for temporary use should be around 15% of the surface area for permanent workstations.

### *4.3.3 Taking service areas into account*

96. Like any public building, courthouses have technical premises complying with the standards in force in each state. What is different about court buildings is that they require premises to store files and evidence. In many states, procedural rules require files or evidence to be stored for several years and premises designed for this purpose often prove to be too small.

97. The logistical aspects need to be carefully studied to ensure easy access for delivery vehicles, unloading and subsequent transfer by trolley to storage areas.

98. Provision must also be made for certain services for the public and staff, for instance crèches, restaurant and coffee-break areas, water fountains, Wi-Fi terminals, and libraries.

### *4.3.4 Areas specifically for lawyers*

99. In view of the fundamental role played by lawyers in the various procedures, there is a need for dedicated premises in the courts with confidential areas for them to meet their clients.

### 4.4 Security in the building

#### *4.4.1 Different levels of security depending on the type of case*

100. The rise in the number of physical and verbal attacks in recent years has led to the need to strengthen security in the courts. It is essential to define, for each court in the light of the type of cases it deals with, the appropriate level of security, or to differentiate within one and the same building, levels of restricted access, with some areas having tighter security measures. For example, courts dealing with organised crime must have enhanced measures, including in certain parts of the building such as the car park reserved for court staff.

101. Particularly vulnerable positions are those dedicated to reception of the public. For these positions, it would be useful to introduce a physical separation between staff and the public. However, the installation of technical equipment (security screens, for example) should not have an adverse effect on the quality of the reception of the public by causing communication difficulties. Systems can be installed such as sliding windows making it possible to adapt the level of separation in accordance with staff needs and the situation at the time. It would also be worth considering to have a simple means whereby documents can be passed through.

102. Offices for individual appointments with the public or taking statements are also highly vulnerable areas and such premises must be designed with two access points, one for the public and one, at the opposite side of the room, for staff through which the latter can exit if there is any threat.

103. Specially equipped rooms (with reinforced security, different exit points) should be envisaged. They should be reserved to certain cases, including civil cases, in which there might be concerns as regards the occurrence of violent behaviours between the parties or towards judicial staff.

104. Alarm equipment connected to reception or the security desk will ensure that outside intervention is possible.

#### *4.4.2 Zone-specific security measures*

105. By specifying the three zones (public, restricted and secure) it is possible to established different security measures for access to each zone.

106. Access to the public area may be unrestricted or involve the public passing through a security gate. For the area restricted to court staff, a filtering system (presentation of professional ID) or badge system can be used to control access.

107. The secure zone includes the area where individuals brought under escort are held. Depending on the size of the court, one or more areas may be secured in this way. These zones will be subject to enhanced security with restricted access via a separate entrance.

### 4.5 Movement within the court building

#### *4.5.1 Clearly defined zones*

108. Having three distinct zones makes it possible to limit movement within the building. It is essential to analyse the services to be provided to citizens in the public zone: public hearings, chamber hearings, reconciliation meetings, seated area for registering procedures. The underlying principle is to limit public access to the restricted zone in the court and to have premises in the public zone where the judges and court officers can go to provide their services to the public. The judge should be allowed to work in peaceful conditions, without justice users having unlimited access to his office.

#### *4.5.2 Differentiated routes*

109. As far as possible, there should be different routes for the public, the staff and detainees.

110. For security reasons, it is imperative to have a specific, separate route for detainees. Depending on the size of the court, separate entrances can be provided for staff.

111. Within the courthouse, court staff should have their own separate route by which they can access the courtrooms, and if necessary, according to different national traditions, different entrances for judges and prosecutors may be foreseen, in order to mark a clear difference between these two professionals.

112. It is also important for there to be routes for juries and vulnerable witnesses, which may be either specially for them or shared with court staff.

#### *4.5.3 Movement of people with reduced mobility*

113. This factor should be taken into account not only when designing the public routes but also the routes for detainees and the justice professionals.

### 4.6 Courtrooms

#### *4.6.1 Number and size of courtrooms*

114. The number of courtrooms should be decided in the light of a provisional timetable of hearings based on the volume of cases dealt with by the courts in question. Having the different courts share the courtrooms makes it possible to limit the space reserved for this purpose. In assessing needs, it is essential to factor in additional capacity to cater for any increase in activity (for example 30%).

115. The size of courtrooms should be adapted to the type of cases dealt with. It is perhaps not necessary to make provision for a separate courtroom for cases where a large number of people would attend, but rather a room with a moveable partition wall between it and the foyer so that this area could be used where larger capacity was required.

#### *4.6.2 The different types of courtroom*

116. In Europe there are different courtroom layouts (area for the prosecution, witnesses, raised areas etc.) for which it is up to each state to lay down the rules.

117. In general, the following points should be noted:

118. In criminal cases, there is a separate access for detainees with a secure dock for them and their escort. The dock must have a sufficient level of security so as to prevent any physical contact between the accused and the other people in the courtroom or the possibility of anything being thrown at defendants, while still allowing for communication between the accused and their counsel, seated or standing. If possible, courtroom layout should accommodate the possibility of separated sitting arrangements for witnesses.

119. In civil cases, conventional courtrooms are used, i.e. with rooms in which the litigants are on the same level as the judges and lawyers, seated around the same table. Often there is an insufficient number of such rooms.

120. Particular attention should be paid to the design of conciliation or mediation rooms, bearing in mind the increase in settlements of this type.

#### *4.6.3 Courtroom equipment*

121. The quality of acoustics is of particular importance to enable the public to follow the hearing. Excessive reverberation must be avoided and for large courtrooms, an effective soundproofing system should be in place.

122. The courtroom should have facilities to view films or computer media.

123. Certain courtrooms should be designed so as to allow for videoconferencing.

124. It is important that the parties are able to communicate directly with their defence counsels without being heard.

125. In certain countries, a « justice of cabinet » is emerging, for instance in family disputes. Processing these case requires that parties be met in a place allowing to preserve the intimate character of the

subject which is being dealt with. Offices, small hearing or meeting rooms for this type of "justice of cabinet" could be set up in areas which should be different from the office of a judge.

#### *4.6.4 Waiting room design*

126. There must be waiting rooms of an adequate size corresponding to the number of courtrooms that are planned. The main area through which people pass (the foyer) could be designed in such a way as to have separate areas for each of the different types of hearing: public, family cases, specialist hearings.

127. For courtrooms hearing family cases or for matters heard in chambers, it would be preferable for there to be separate waiting rooms for the two parties. For criminal hearings, there should be a separate waiting room for witnesses.

128. Particular attention should be paid to the victims of criminal offences and, where necessary, ensure that there are separate waiting rooms for them.

#### *4.6.5 Other useful facilities*

129. It would be helpful to have confidential areas for discussions between defendants and their counsel close to the courtrooms. A press room would also be a useful addition.

130. Toilets should be close by for litigants while they wait for their hearing, and vending machines where they could buy drinks should also be available. Their number should be proportionate to the court needs.

## 5. MAKING PROVISION FOR POSSIBLE EXPANSION OF THE BUILDING

### 5.1 Having additional land in reserve

131. Given the time that elapses between the design stage and the completion of a building, it is not always possible to take account of court developments. Having additional land in reserve is one way of ensuring that a future extension would be possible.

### 5.2 Opting for a modular approach

132. Restructuring is frequent in the judicial field and requires regular adaptation of premises.

133. To assist with the reallocation of space, it is a good idea to opt for buildings with standardised office unit dimensions, and partition walls and ceilings that can be dismantled in these areas.

134. Similarly, it would be worthwhile designing courtrooms in such a way that a large room could be divided into two smaller rooms, which could, when required be joined together again if a large room were needed.

### 5.3 Incorporating maintenance costs

135. Certain architectural choices entail high maintenance costs which are subsequently difficult to afford. Such is the case, for example, with large glass surfaces which require special means of maintenance, or water features whose upkeep is difficult.

### 5.4 Taking sustainable development into account

136. This is now taken on board in most public construction projects. A court building, with large areas such as the courtrooms and foyer, generates heating and lighting costs that will have to be kept under control.

137. Sustainability and ease of upkeep: materials should be chosen after careful study of their sustainability, in particular in the light of the specific use to which the building will be put.

138. There should be the means of monitoring the performance of the heating, cooling, ventilation and lighting systems.

139. Limitation of energy consumption: particular attention should be paid to the performance of the insulation of the building envelope and to the efficiency of the technical equipment (heating, cooling, ventilation and lighting).

140. Comfort and health: particular attention should be paid to the design of solar protection devices, ensuring stable temperatures, making a distinction between the various routes depending on the direction the façades are facing and their exposure to sunshine, to the quality of natural light and to control of ventilation air speed.

### 5.5 The logistics for the new technologies

141. The logistics facilities should allow for adaptation to the new technologies. As things currently stand, few courtrooms are equipped for videoconferencing. The placing of equipment in courtrooms should be arranged in such a way as to ensure that hearings can be conducted properly and that all participants have a full view of everything.

142. Moreover, network connections and cabling must take account of foreseeable technological developments.

143. Free access to Internet through WI-FI should be encouraged in the reception areas for the public.

### 5.6 Conversion to other uses

144. Where real estate policy results in permanently moving out of a court building, whether it can be used for other purposes will very much depend on its architectural design, imbued to a greater or lesser extent with judicial symbolism. The design of a simple building housing a civil court will not be very dissimilar to a typical office building and therefore much easier to convert than a courthouse dealing with criminal cases having separate circulation routes and large, secure courtrooms.

145. However, consideration given to opting for a modular approach, described in section 6.2, can also help make subsequent conversion of a courthouse much easier.

## 6. RENOVATION OF EXISTING BUILDINGS

### 6.1 Complete renovation

#### *6.1.1 Particular aspects of worksites in buildings which continue to be in use*

146. The simplest solution in order to maintain the operation of the court is to provide for total rehousing during the work, which avoids having to deal with continuing to run the court while building work is taking place.

147. However, given the regulatory constraints relating to buildings open to the public, those relating to separation of movement to ensure the safety of staff and the need to have large courtrooms, total rehousing of the court is not always feasible, either because a suitable building cannot be found within the court's jurisdiction, or because the funds are not available to adapt a building for temporary court use in addition to financing the work on the existing building.

148. An intermediate solution would be to relocate at least in part the office areas so as to carry out the work in phases. The work is then done in turns, with departments being rehoused one at a time. The rehousing can be done in office buildings close to the courthouse or in modular buildings if there is sufficient space on the existing site. The courtrooms should also be renovated in turn to keep to a minimum the reduced capacity for hearings in the court. It may be possible to make provision for a smaller courtroom in the premises used for the temporary rehousing. The smaller the individual phases of the work, the longer it will take for the whole work to be completed.

149. During this phased work, with the building continuing to be partially in use, it is important to ensure a clear separation between the areas where renovation work is taking place and the areas operating normally, both for the safety of the public and so that the two activities do not impact on each other:

- Provision of separate access points and circulation routes: the worksite areas should have a separate access linked to the area for the materials storage area and waste area.

- Arrangements to ensure that the workers and the material do not circulate through the areas open to the public: temporary outside staircases, goods lift, discharge chutes, etc.
- Temporary partitions to ensure protection from the dust and noise of the renovation work. It may be necessary to adapt the emergency exits.

#### *6.1.2 Consultation on the scheduling of work*

150. There has to be effective consultation with the court manager during the studies to stipulate the necessary arrangements to be included in the firms' specifications.

151. The work entailing the most disruption can be scheduled to take place outside the times when the building is open to the public, in the evening or at weekends. The firms must be made aware of these arrangements to avoid any complaints when work is in progress. The impact on the timetabling of hearings must also be taken into account, in order to adapt the issuing of notices to litigants with due regard for the regulatory time-frames.

152. This consultation must continue when work is in progress, with the setting up of a co-ordination unit including the main contractor and representatives of the court manager to ensure effective communication ahead of each work phase and to co-ordinate the scheduling of work and the timetabling of the court. It would also be helpful to include in this unit the firm responsible for site maintenance to schedule the work required on existing technical installations (cuts, insulation, draining, laying on the water supply, etc.).

#### *6.1.3 Adapting the reference documentation*

153. The reference documentation for the architects will be the same as that for new buildings.

154. However, often the level of functional, technical and regulatory requirements will have to be tailored to what can feasibly done with the building in order to remain within a reasonable budget, bearing in mind, moreover, that the risk of technical hazards is much higher in restructuring an existing building than it is when constructing a new building.

### 6.2 Ensuring compliance with regulations

155. This will involve specifically focused action to comply with regulatory or technical obligations.

#### *6.2.1 Scheduling of work*

156. It will be essential to identify the priority areas of work in order to optimise the available resources. These priorities may be disseminated by means of an annual circular setting out proposals for inclusion in the multiannual programme. This programme will be based on current regulations and an analysis of the condition of the real estate by means of the assessments described in 2.1. The main points concern accessibility for people with disabilities, energy savings and fire safety.

#### *6.2.2 Accessibility for people with disabilities*

157. Recommendation 1592 and Resolution 1642 of the Parliamentary Assembly of the Council of Europe advocate adapting the built environment to make it accessible to people with disabilities by applying universal design principles and avoiding the creation of new obstacles.

158. The first phase is to carry out a systematic audit of all the real estate to be able to define an accessibility index, draw up a list of work to be carried out to ensure compliance with regulations and work out the cost. The priority work will relate to those buildings with the lowest accessibility indices, receiving the most people.

159. The second phase is to carry out detailed feasibility studies on the priority sites. As the buildings are often old, subject to heritage protection measures, structural work on entrances and staircases will be complex and costly. Prior to any work to ensure overall compliance with regulations, thought needs to be given to the functional organisation of the building and to bringing those services dealing with the most people closer to the building entrance.

160. This type of restructuring also helps improve safety in the building, by limiting public access to the new office areas.

161. In addition, a study of the different options for ensuring compliance with the regulations may serve as a basis for a discussion with the departments responsible for heritage protection and those responsible for regulations regarding people with disabilities, so as to result in projects which will be given planning permission. This phase may also give rise to dispensatory solutions approved by the relevant departments which are less costly than work to bring the building fully into line with regulatory standards.

162. If there are serious budgetary constraints, then the work should be carried out in stages depending on the importance of the aspects to be brought up to standard as regards people with disabilities, in the following proposed order:

- access to the building
- the reception area
- one courtroom per type of use (criminal, civil, hearing in chambers)
- toilet facilities close to reception and the courtrooms

163. In addition to the work relating to accessibility for people in wheelchairs, provision should be made for work in connection with other disabilities: for example, improving lighting and signage for people with visual impairments, the provision of audio induction loops for those with hearing impairments, and adapting door handles and the height of light switches. Very often, this work also helps improve the quality of reception for the general public.

### *6.2.3 Taking respect for the environment into account*

164. An effective policy in this regard should be based on concerted action between the day-to-day use and maintenance of and investment work on the buildings.

165. With regard to the day-to-day use, it is essential for the court managers to raise the occupants' awareness of the challenges, objectives, steps to be taken and results obtained.

166. Steps should be taken to limit the use of individual devices which use a lot of energy, such as supplementary heating and lighting, individual printers or individual kettles or coffee machines.

167. A commitment to comply with reasonable summer and winter temperature norms, and regulatory ventilation airflows could also be made known and enforced.

168. Concerning maintenance, the introduction of performance clauses in contracts should bring about changes in practices by encouraging firms to make savings in relation to a baseline situation: compliance with temperature and ventilation norms, installation of meters and timer system, replacement of lighting sources, installation of heat recovery systems and rainwater recovery systems for watering, restricting the temperature of the water heater for hand washing, etc.

169. The real estate investment policy should make it possible to carry out the most extensive work by seeking to optimise the relationship between expenditure and the savings generated.

170. The first phase of this policy is to gather data on electricity and gas consumption in each building. Problem sites can be identified in the light of the total energy consumption of each site and its consumption per m2.

171. In the light of the total consumption for all the real estate, it is possible to set a global target for reducing consumption.

172. Priority action will focus on the sites with the highest consumption per m2. There is no point in trying to ensure that each building meets the reduction target.

173. The work will focus on insulation of the building envelope and optimisation of the technical equipment.

174. For the less complicated sites, the analysis will be based on the assessments described in 2.1. For the more complex sites, identified as priority sites, detailed audits should be carried out to draw up and quantify action plans.

175. Account must be taken of the time taken to obtain a return on investment in the optimisation work in order to draw up a work schedule (cost of investment divided by consumption savings). In this connection, it will be noted that the return on investment in equipment takes considerably less time than does investment in insulation of the building envelope.

176. The work on equipment which is of interest here includes, in order of priority, replacement of the heating or air-conditioning system, installation of timers, optimising ventilation flow rate, replacement of lights or the installation of timers or sensor-dependent lighting control.

177. The work on insulation of the building envelope which is of interest includes, in order of priority, roof insulation, floor insulation, wall insulation and replacement of external joinery. For the latter, in view of the very long lead time for return on investment, it is basically justified only where it is in a very poor condition.

#### *6.2.4 Fire safety*

178. Building regulations precisely set out the rules to be adhered to in buildings open to the public.

179. Regular inspections can give an up-to-date picture of the situation of the building vis-à-vis the regulations and specify corrective measures.

180. If major work is carried out on the building, the authorities responsible for enforcement of the fire safety regulations may require more extensive work to comply with the regulations.

181. In such cases, the aim is not to bring the building up to standard, but in the light of a fire-safety analysis, to suggest ensuring the safety of the building by means of compensatory measures to offset the situations which deviate from the regulations, where full compliance would be technically or financially too onerous to implement. Finalising these plans to ensure the safety of the building presupposes close consultation with the departments responsible for fire safety in public buildings.

## Guidelines for a better implementation of the existing Recommendation on alternatives to litigation between administrative authorities and private parties

### Introduction

1. At the Third Summit of the Council of Europe (Warsaw, May 2005), the Heads of State and Government undertook to make "full use of the Council of Europe's standard-setting potential" and "promote implementation and further development of the Organisation's legal instruments and mechanisms of legal co-operation". They also decided "to help member states to deliver justice fairly and rapidly and to develop alternative means for the settlement of disputes".

2. In the light of these decisions, the CEPEJ, one of whose aims in its Statute is "to enable a better implementation of the international legal instruments of the Council of Europe concerning efficiency and fairness of justice", has included among its priorities a new activity directed towards facilitating effective implementation of Council of Europe instruments and standards regarding alternative dispute settlement.

3. The Working Group on Mediation (CEPEJ-GT-MED)[28] was therefore set up to gauge the impact in member States of the relevant recommendations of the Committee of Ministers, namely:

- Recommendation Rec(98)1 on family mediation,
- Recommendation Rec(2002)10 on mediation in civil matters,
- Recommendation Rec(99)19 concerning mediation in penal matters,
- Recommendation Rec(2001)9 on alternatives to litigation between administrative authorities and private parties,

and to recommend specific measures for facilitating their effective implementation, thus improving implementation of the mediation principles contained in these recommendations.

4. This document concerns Recommendation Rec(2001)9 on alternatives to litigation between administrative authorities and private parties. The three other Recommendations concerning family mediation, mediation in civil matters and mediation in penal matters may require specific approach and are examined in separate documents.

5. At the first meeting of the Working Group (Strasbourg, 8-10 March 2006), a questionnaire was drawn up to determine member States' awareness of the above Recommendations and the development of alternatives to litigation between administrative authorities and private parties in their countries in accordance with the principles contained therein. The questionnaires were sent to 16 representative States.

6. 52 replies were received to the questionnaire from member States and from practitioners and a report was drawn up by Mr Julien LHUILLIER (France), scientific expert, summarising those responses.

7. It is suggested that further work should be undertaken on updating the Recommendation and its explanatory memorandum, in particular concerning the concept and definitions of mediation and conciliation. Before doing so, it would be necessary to have a fuller evaluation of the impact of alternatives to litigation between administrative authorities and private parties in member states based on up-to-date and comparable data.

8. As might be expected, there are considerable differences between member States in the way that alternatives to litigation between administrative authorities and private parties have advanced, particularly because of the following obstacles:

- member States are unaware of the potential usefulness and effectiveness of alternatives to litigation between administrative authorities and private parties;
- therefore few efforts have been made in order that administrative authorities are aware of the advantages of these means, which can lead to creative, efficient and sensible outcomes;
- distrust of the courts to the development of non-judicial alternatives to litigation in the administrative field;
- lack of awareness of various alternative dispute resolution means in this specific field;

[28] The CEPEJ-GT-MED is composed as followed: Ms Nina BETETTO (Slovenia), Ms Ivana BORZOVÁ (Czech Republic), Mr Peter ESCHWEILER (Germany), Ms Maria da Conceição OLIVEIRA (Portugal), Mr Rimantas SIMAITIS – President - (Lithuania), Mr Jeremy TAGG (United Kingdom), Ms Anna WERGENS (Sweden).

- lack of specialized neutrals in this area;
- little academic research has been undertaken on alternatives to litigation in administrative field.

9. In the light of these obstacles, the Working Group has therefore drawn up the following non binding guidelines to help member states to implement the Recommendation on alternatives to litigation between administrative authorities and private parties..

## 1. AVAILABILITY

10. Alternatives to litigation between administrative authorities and private parties will only become established in member States if a policy that addresses the use of these means of dispute resolution is adopted, either to prevent disputes before they arise or to resolve them subsequently.

11. These means must be available and in, order to expand their availability, measures should be taken to promote and set up workable schemes.

### 1.1 Role of member States

12. Member States, namely Governments and administrative authorities, play a central role concerning the promotion of the use of alternative means for resolving disputes with private parties, concerning individual administrative acts, contracts, civil liability or other issues of controversy.

13. Member states are encouraged to define when and how it is appropriate to use such alternative means as internal review, conciliation, mediation, negotiated settlement and arbitration

14. Member States should adopt specific measures to promote the use of alternative means of dispute resolution either by their institutionalisation or their use case-by-case.

15. When necessary, they should adopt legislation or adapt the existing legislation according to the principles in the Recommendation, for example making internal reviews, conciliation, mediation and negotiated settlement compulsory in certain cases.

16. Member States should encourage the use of internal reviews, conciliation, mediation and negotiated settlement as a prerequisite to the commencement of legal procedures.

17. Member States should encourage administrative authorities to propose alternative means of dispute resolution when available and not against existing law to resolve issues in dispute with private parties.

18. Member States should encourage administrative authorities to review standard agreements for contracts, grants and other assistance to authorize and encourage the use of alternative means of dispute resolution.

19. When required by private parties, administrative authorities should accept to submit the issue in dispute to an alternative dispute resolution means available, unless this procedure is against public interest or is abused by a private individual.

### 1.2 Support of alternatives to litigation between administrative authorities and private parties projects by member States

20. States should recognise and promote alternatives to litigation between administrative authorities and private parties schemes, by financial support or other form of support, to ensure they provide a quality service and a balanced involvement of all concerned parties (officers or employees representing public authorities, private parties, recognized neutrals associations, researchers, bar associations, judiciary, legal professionals, etc)

21. Internal review, being an important means of preventing disputes before they arise, should be used before alternative dispute resolution procedures even when they are available.

### 1.3. Role of administrative authorities

22. Administrative authorities should, in their daily practice in relation to private parties, use internal review procedure for the expediency and/or legality of an administrative act.

23. Administrative authorities should use the most appropriate methods of alternative dispute resolution, with the agreement of the parties.

### 1.4. Role of the judge

24. Judges have an important role in the development of alternatives to litigation between administrative authorities and private parties. Where applicable, they should have the power to recommend alternatives to litigation, namely conciliation, mediation and negotiated settlement, and arrange information sessions. It is important therefore that these alternatives are available, either by the establishment of court annexed schemes or by directing parties to lists of neutrals.

25. In judicial review, judges must take into account parties' agreement unless it is against the public interest.

### 1.5. Role of lawyers

26. The codes of conduct for lawyers should include an obligation or a recommendation to consider alternative means of dispute resolution including alternatives to litigation between administrative authorities and private parties before going to court, in appropriate cases, and to give relevant information and advice to their clients.

27. Bar associations and lawyers associations should have lists of neutrals specialized in alternative means to litigation between administrative authorities and private parties and disseminate them to lawyers.

### 1.6. Quality of alternatives to litigation between administrative authorities and private parties schemes

28. It is important that schemes and on-going pilot projects are continually monitored and evaluated to ensure they respect the principles of equality and impartiality and the rights of parties. Certain common criteria of evaluation should be developed.

29. Member States should encourage public authorities to work together to facilitate, promote and coordinate the use of alternative dispute resolution between public authorities and private parties.

### 1.7 Neutrals' qualifications

30. It is essential for administrative authorities when proposing or accepting alternatives to litigation, for judges when referring parties to these means, for lawyers when advising clients, and for the general public's confidence that the quality of the services provided is ensured.

31. In order to ensure the principles of equality, impartiality and the rights of parties, neutrals - mediators, conciliators, negotiators and arbitrators - should not be permanent or temporary public officers or employees,

32. Taking into account the disparities in training programmes, member States should try to ensure that neutrals have adequate training programmes and should set up common standards concerning the training.

33. As a minimum, the following items should be covered in the training of neutrals:

- principles and aims of alternatives to litigation between administrative authorities and private parties,
- attitude and ethics of neutrals,
- characteristics, phases and aims of each means – mediation, conciliation, negotiated settlement and arbitration.
- indication, structure and course of the various alternatives to litigation between administrative authorities and private parties,
- legal framework of the various alternatives to litigation between administrative authorities and private parties,
- skills and techniques of communication and negotiation,
- skills and techniques of the various alternatives to litigation between administrative authorities and private parties,
- adequate amount of role plays and other practical exercises,
- peculiarities of alternatives to litigation between administrative authorities and private parties

- assessment of the knowledge and competences of the trainee.

34. This training should take into account the specific nature of mediators/conciliators, negotiators and arbitrators.

35. It is strongly recommended that this training should be followed by supervision, mentoring and continuing professional development.

36. Member States should recognise the importance of establishing common criteria to permit the accreditation of neutrals and/or institutions which provide alternatives to litigation between administrative authorities and private parties and/or who train neutrals. Because of the increased mobility throughout Europe, measures should be taken to establish common international criteria for accreditation as, for example, a certificate of European mediator, etc.

37. As certain member States encounter problems where the quality of training of neutrals is concerned, national training institutions are recommended to establish links and/or to establish a continuous training programme for neutrals (for example, a European neutrals training centre). This could be facilitated by the Council of Europe in co-operation with the European Union.

### 1.8. Codes of conduct

38. Member States should take measures to ensure the uniformity in the concepts, scope and guarantees of the main principles of alternatives to litigation between administrative authorities and private parties such as confidentiality, when applicable, and others within their countries.

39. Having in mind that the European Code of Conduct for Mediators in civil and commercial mediation is gaining general recognition by various mediation stakeholders throughout Europe, it is recommended that special codes are developed for alternatives to litigation between administrative authorities and private parties.

### 1.9. Breaches of codes of conduct

40. Where neutrals breach a code of conduct, member states should have in place appropriate complaints and disciplinary procedures.

## 2. ACCESSIBILITY

### 2.1. Cost of the alternatives to litigation between administrative authorities and private parties for the users

41. Internal review, being normally the “first level” of solving disputes, should be free to encourage both parties to reach a consensual solution for the case without the intervention of a neutral or the courts.

42. Concerning other means, where the intervention of a neutral is necessary, the cost for the private parties should be reasonable and proportionate to the issue at stake. In order to make alternatives to litigation between administrative authorities and private parties accessible for the general public, member States should ensure some direct financial support to them. For reason of equality before the law and access to law, it is unacceptable for some categories of the population to be excluded from a service on financial grounds. For those with limited financial means, member States should be encouraged to make legal aid available for parties involved in the alternatives to litigation between administrative authorities and private parties in the same way that it would provide for legal aid in litigation.

### 2.2. Suspension of limitation terms

43. Parties should not be prevented from using alternatives to courts, except for arbitration, by the expiry of limitation terms.

44. Member States are encouraged to implement provisions for the suspension of limitation terms.

## 3. AWARENESS

45. It appears from the questionnaire responses that lack of awareness among member states, governments and administrative authorities, the judiciary, legal professionals, users of the justice system and the general public is one of the main obstacles to the development of the alternatives to litigation between administrative authorities and private parties.

46. In order for the Recommendation on alternatives to litigation between administrative authorities and private parties to be accessible to policy makers, public officers and employees, academics, private parties stakeholders and neutrals, it is vital that it is translated and disseminated in the languages of all member States.

47. It is recommended that CEPEJ creates a special page on mediation and other alternatives to litigation in its website. It could include translated text of the Recommendations**,** their explanatory memorandum and other relevant texts of the Council of Europe, assessment of the impact in countries of the Recommendations concerned. This special page could also include information on the monitoring and evaluation of mediation and other alternatives to litigation schemes and pilot projects, list of mediation providers or neutrals in member states, useful website links, etc.

### 3.1. Awareness of general public

48. Member States, Government's officers or employees and neutrals should take appropriate measures to raise awareness of the benefits of the alternatives to litigation between administrative authorities and private parties among the general public.

49. Such measures may include:
- Articles/information in the media,
- dissemination of information on alternatives to litigation via leaflets/booklets, internet, posters,
- neutrals telephone helpline,
- information and advice centres,
- focused awareness programmes,
- seminars and conferences,
- open days at courts and institutions which provide these services

50. Member States are also encouraged to make information available to the general public on how to access and use alternatives to litigation between administrative authorities and private parties, in particular on the internet.

51. Member States should also note that court annexed alternatives to litigation between administrative authorities and private parties in practice appear to be an efficient means of raising awareness for the judiciary, legal professionals and users.

52. Member States, universities, other academic institutions and alternatives to litigation between administrative authorities and private parties stakeholders should support and promote scientific research in the field of these alternatives to litigation.

53. These alternatives to litigation should be included in schools national curricula.

### 3.2. Awareness of the users

54. Government officials and employees, members of the judiciary, prosecutors, lawyers and other legal professionals as well as other institutions involved in dispute resolution should provide information and advice on alternatives to litigation between administrative authorities and private parties.

55. In order to make these alternatives to litigation more attractive to users, member States may wish to consider diminishing, abolishing or reimbursing court fees in specific cases if alternatives to litigation are used to try to settle the dispute either before going to court or during court proceedings.

56. Member States may request from the private parties and from the providers of legal aid, before receiving legal aid for the litigation, to consider amicable settlements of the dispute, including these alternatives to litigation.

### 3.3. Awareness of the judiciary

57. Where judges play a role in alternatives to litigation between administrative authorities and private parties, it is essential that they have a full knowledge and understanding of the processes and their benefits. This may be achieved through information sessions as well as initial and in-service training programmes which include specific elements of these alternatives to litigation useful in day-to-day work of courts in particular jurisdictions.

58. It is important to foster both institutional and individual links between judges and neutrals. This can be done in particular by joint conferences and seminars.

### 3.4. Awareness of the lawyers

59. Alternatives to litigation between administrative authorities and private parties should be included in the curricula of initial as well as continuous training programmes for lawyers.

60. Members States and Bar associations should take measures to create legal fee structures that do not discourage lawyers from advising clients to use amicable dispute resolution methods. For example, fixed fees for specific cases could encourage early settlements, clients could pay the same fees to lawyers irrespective of whether a specific case is resolved by alternatives to litigation or through the traditional court process, higher rate of fees for lawyers may be payable if the settlement is achieved.

## Guidelines for a better implementation of the existing recommendation concerning family mediation and mediation in civil matters

### Introduction

1. At the Third Summit of the Council of Europe (Warsaw, May 2005), the Heads of State and Government undertook to make "full use of the Council of Europe's standard-setting potential" and "promote implementation and further development of the Organisation's legal instruments and mechanisms of legal co-operation". They also decided "to help member states to deliver justice fairly and rapidly and to develop alternative means for the settlement of disputes".

2. In the light of these decisions, the CEPEJ, one of whose aims in its Statute is "to enable a better implementation of the international legal instruments of the Council of Europe concerning efficiency and fairness of justice", has included among its priorities a new activity directed towards facilitating effective implementation of Council of Europe instruments and standards regarding alternative dispute settlement.

3. The Working Group on Mediation (CEPEJ-GT-MED)[29] was therefore set up to gauge the impact in member states of the relevant recommendations of the Committee of Ministers, namely:

- Recommendation Rec(98)1 on family mediation,
- Recommendation Rec(2002)10 on mediation in civil matters,
- Recommendation Rec(99)19 concerning mediation in penal matters,
- Recommendation Rec(2001)9 on alternatives to litigation between administrative authorities and private parties,

and to recommend specific measures for facilitating their effective implementation, thus improving implementation of the mediation principles contained in these recommendations.

4. This document concerns Recommendations Rec(98)1 on family mediation and Rec(2002)10 on mediation in civil matters. The two other Recommendations, which concern mediation in penal matters and alternatives to litigation between administrative authorities and private parties, require a specific approach and are examined in separate documents.

5. At the first meeting of the Working Group (Strasbourg, 8-10 March 2006), a questionnaire was drawn up to determine member states' awareness of the above Recommendations and the development of mediation in their countries in accordance with the principles contained therein. The questionnaires were sent to 16 representative States.

6. 52 replies were received to the questionnaire from member states and from practitioners and a report was drawn up by Mr Julien LHUILLIER (France), scientific expert, summarising those responses.

7. As might be expected, there are considerable differences between member states in the way that civil and family mediation has advanced, particularly because of the following obstacles:

- lack of awareness of mediation;
- high relative costs of mediation for the parties and financial imbalances;
- disparities in training and qualifications of mediators;
- disparities in the scope and guarantees of confidentiality.

8. In the light of these obstacles, the Working Group has therefore drawn up the following non binding guidelines to help member states to implement the Recommendations on family mediation and mediation in civil matters.

9. The Working Group took note of the work of the UNCITRAL (United Nations Commission on International Law), the European Union and other institutions in the field of mediation when drafting these guidelines.

[29] The CEPEJ-GT-MED is composed as followed: Ms Nina BETETTO (Slovenia), Ms Ivana BORZOVÁ (Czech Republic), Mr Peter ESCHWEILER (Germany), Ms Maria da Conceição OLIVEIRA (Portugal), Mr Rimantas SIMAITIS – President - (Lithuania), Mr Jeremy TAGG (United Kingdom), Ms Anna WERGENS (Sweden).

## 1. AVAILABILITY

10. To expand equal availability of mediation services, measures should be taken to promote and set up workable mediation schemes across as wide a geographical area as possible.

### 1.3 Support of mediation projects by member states

11. Member states should recognise and promote existing as well as new workable mediation schemes by financial and other forms of support. Where successful mediation programmes have been established, member states are encouraged to expand their availability by information, training and supervision.

### 1.2. Role of the judges

12. Judges have an important role in the development of mediation. They should be able to give information, arrange information sessions on mediation and, where applicable, invite the parties to use mediation and/or refer the case to mediation. It is important therefore that, mediation services are available, either by the establishment of court annexed mediation schemes or by directing parties to lists of mediation providers.

### 1.3. Role of lawyers

13. The codes of conduct for lawyers should include an obligation or a recommendation to consider alternative means of dispute resolution including mediation before going to court in appropriate cases, and to give relevant information and advice to their clients.

14. Bar associations and lawyers associations should have lists of mediation providers and disseminate them to lawyers.

### 1.4. Quality of mediation schemes

15. It is important that member states continually monitor their mediation schemes and on-going pilot projects and arrange for their external and independent evaluation. Certain common criteria, including both qualitative and quantitative evaluation aspects, should be developed to enable the quality of mediation schemes to be compared.

### 1.5. Confidentiality

16. The principle of confidentiality is essential for the confidence of the parties in the mediation process and its result. Therefore, the scope of confidentiality should be defined at all stages of the mediation process and after its termination. Member states are free to decide, according to national legal tradition and practice, whether the scope of confidentiality should be defined by legislative measures or by agreement or both.

17. Where the scope of confidentiality is defined by agreement, it should make clear those facts that can be revealed to third parties when the mediation is over.

18. The duty of confidentiality should be binding for the mediator at all stages of the mediation process and after its termination. Whenever this duty is subject to exceptions (e.g. when the mediator is called to witness on the facts of a crime revealed during the mediation, or when the mediator's participation as a witness on a trial is required in the best interest of a child, or to prevent harm to the physical or psychological integrity of a person), these exceptions should be clearly defined by legislation, self-regulation or agreement.

19. Members States should provide for legal guaranties of confidentiality in mediation. The breach of the confidentiality duty by a mediator should be considered as a serious disciplinary fault and be sanctioned appropriately.

### 1.6 Mediators' qualifications

20. It is essential for judges when referring parties to mediation, for lawyers when advising clients, and for the general public confidence in the mediation process that the quality of mediation is assured.

21. Member States and/or mediation stakeholders should provide adequate training programmes for mediators and, taking into account the disparities in training programmes, set up common standards concerning the training.

22. As a minimum, the following items should be covered in mediation training:

- principles and aims of mediation,
- attitude and ethics of the mediator,
- phases of the mediation process,
- traditional settlement of a dispute and mediation,
- indication, structure and course of mediation,
- legal framework of mediation,
- skills and techniques of communication and negotiation,
- skills and techniques of mediation,
- adequate amount of role plays and other practical exercises,
- peculiarities of family mediation and interest of the child (family mediation training) and of various types of civil mediation (civil mediation training),
- assessment of knowledge and competence of the trainee.

23. This training should be followed by supervision, mentoring and continuing professional development.

24. Member states should recognise the importance of establishing common criteria to permit the accreditation of mediators and/or institutions which offer mediation services and/or who train mediators. Because of the increased mobility throughout Europe, measures could be taken to establish common international criteria for accreditation as, for example, a certificate of European mediator, etc.

25. As certain member states encounter problems where the quality of training of mediators is concerned, national training institutions are recommended to establish links and/or to establish a continuous training programme for mediators and for mediation trainers (for example, a European training centre). This could be facilitated by the Council of Europe in co-operation with the European Union.

### 1.7. Best interests of the child

26. Where family mediation is concerned, member states unanimously recognise the importance of the child's best interests. However, the criteria for recognizing the child's best interests vary according to national legislations.

27. It is therefore recommended that member states and other bodies involved in family mediation work together to establish common valuation criteria to serve the best interest of the child, including the possibility for children to take part in the mediation process. These criteria should include the relevance of the child's age or mental maturity, the role of parents and the nature of the dispute. This could be facilitated by the Council of Europe in co-operation with the European Union.

### 1.8. Codes of conduct

28. Member states should take measures to ensure the uniformity in the concepts, scope and guarantees of the main principles of mediation such as confidentiality and others within their countries, by legislative measures and/or by developing codes of conduct for mediators.

29. Having in mind that the European Code of Conduct for Mediators in civil and commercial mediation is gaining general recognition by various mediation stakeholders throughout Europe, it is recommended that member states promote this Code as a minimum standard for civil and family mediation, taking into account the specific nature of family mediation.

### 1.9. Breaches of codes of conducts

30. Where mediators breach a code of conduct, member states and mediation stakeholders should have in place appropriate complaints and disciplinary procedures.

### 1.10. International mediation

31. In response to Rec(98)1 on family mediation in particular, very few member states appear to have set up mechanisms for the use of mediation in cases with an international element. It is therefore recommended that those States that have made progress in this area facilitate an exchange of information with those that have not.

32. Bearing in mind the high cost of international mediation, States should encourage the use of new technologies instead of face-to-face meetings such as video and telephone conferencing as well as on-line dispute resolution methods.

## 2. ACCESSIBILITY

### 2.1. Cost of the mediation for the users

33. The cost of mediation for the users should be reasonable and proportionate to the issue at stake. In order to make mediation accessible for the general public, states should ensure some direct financial support to mediation services.

34. For reason of equality before the law and access to law, it is unacceptable for some categories of the population to be excluded from a service on financial grounds. For those with limited financial means, member states should be encouraged to make legal aid available for parties involved in the mediation in the same way that it would provide for legal aid in litigation.

35. In order to make international mediation accessible and bearing in mind the high cost and the complexity of organising international mediation, member states should take measures to establish, support and promote international mediation.

### 2.3. Suspension of limitation terms

36. Parties should not be prevented from using mediation by the risk of expiry of limitation terms. In practice, replies from member states show that few States provide for suspension of limitation terms when referring cases to mediation. In order to rectify this problem, member states are strongly encouraged to implement provisions for the suspension of limitation terms.

## 3. AWARENESS

37. Even if mediation is available and accessible to all, not everyone is aware of mediation. Responses to the questionnaire show that lack of awareness among judiciary, legal professionals, users of justice system and the general public is one of the main obstacles to the advancement of mediation. Member states and mediation stakeholders should keep in mind that it is hard to break society's reliance on the traditional court process, as the principal way of resolving disputes.

38. In order for the Recommendations on mediation in family and civil matters to be accessible to policy makers, academics, mediation stakeholders and mediators, it is vital that it is translated and disseminated in the languages of all member states.

39. It is recommended that CEPEJ creates a special page on mediation in its website. It could include translated text of the Recommendation, its explanatory memorandum and other relevant texts of the Council of Europe concerning mediation, assessment of the impact in countries of the Recommendations on mediation in civil and family matters. This special page could also include information on the monitoring and evaluation of mediation schemes and mediation pilot projects, list of mediation providers in member states, useful website links, etc.

### 3.1. Awareness of general public

40. Member states and mediation stakeholders should take appropriate measures to raise awareness of the benefits of the mediation among the general public.

41. Such measures may include:

- Articles/information in the media,
- dissemination of information on mediation via leaflets/booklets, internet, posters,
- mediation telephone helpline,
- information and advice centres,
- focused awareness programmes such as "mediation weeks",
- seminars and conferences,
- open days on mediation at courts and institutions which provide mediation services.

42. Member states and mediation stakeholders are also encouraged to make information available to the general public on how to contact mediators and organisations providing mediation services, in particular on the internet.

43. Member states should also note that court annexed mediation in practice appear**s** to be an efficient means of raising awareness of mediation for the judiciary, legal professionals and users.

44. Member states, universities, other academic institutions and mediation stakeholders should support and promote scientific research in the field of mediation and alternative dispute resolution.

45. Mediation and other forms of dispute resolution should be included in schools national curricula.

### 3.2. Awareness of the users

46. Members of the judiciary, prosecutors, lawyers and other legal professionals as well as other bodies involved in dispute resolution should provide early information and advice on mediation specific to the parties in their dispute.

47. In order to make mediation more attractive to users, member states may wish to consider diminishing, abolishing or reimbursing court fees in specific cases if mediation is used to try to settle the dispute either before going to court or during court proceedings.

48. Member states may request from the users and from the providers of legal aid, before receiving legal aid for the litigation, to consider amicable settlement of the dispute, including mediation.

49. Parties could be sanctioned if they fail to actively consider the use of amicable dispute resolution. For example, member states may consider establishing a rule that parties normally entitled for reimbursement of their litigation costs in the civil or family dispute resolved by court judgment or decision do not receive full reimbursement if they have refused to go to mediation or if they failed to present the evidence that they have actively considered the use of amicable dispute resolution.

### 3.3. Awareness of the judiciary

50. Judges play a crucial role in fostering a culture of amicable dispute resolution. It is essential therefore that they have a full knowledge and understanding of the process and benefits of mediation. This may be achieved through information sessions as well as initial and in-service training programmes which include specific elements of mediation useful in day-to-day work of courts in particular jurisdictions.

51. It is important to foster both institutional and individual links between mediators and judges. This can be done in particular by conferences and seminars.

### 3.4. Awareness of the lawyers

52. Mediation should be included in the curricula of initial as well as continuous training programmes for lawyers.

53. Bar associations and lawyers associations should have lists of mediation programmes providers and disseminate them to lawyers.

54. Members States and Bar associations should take measures to create legal fee structures that do not discourage lawyers from advising clients to use mediation in settling disputes.

### 3.5. Awareness of non-governmental organisations and other concerned bodies

55. Member states and mediation stakeholders are encouraged to take measures to raise the awareness of non-governmental organisations and other concerned bodies to mediation.

## Guidelines for a better implementation of the existing recommendation concerning mediation in penal matters

### Introduction

1. At the Third Summit of the Council of Europe (Warsaw, May 2005), the Heads of State and Government undertook to make "full use of the Council of Europe's standard-setting potential" and "promote implementation and further development of the Organisation's legal instruments and mechanisms of legal co-operation". They also decided "to help member states to deliver justice fairly and rapidly and to develop alternative means for the settlement of disputes".

2. In the light of these decisions, the CEPEJ, one of whose aims in its Statute is "to enable a better implementation of the international legal instruments of the Council of Europe concerning efficiency and fairness of justice", has included among its priorities a new activity directed towards facilitating effective implementation of Council of Europe instruments and standards regarding alternative dispute settlement.

3. The Working Group on Mediation (CEPEJ-GT-MED)[30] was therefore set up to gauge the impact in member states of the relevant recommendations of the Committee of Ministers, namely:

- Recommendation Rec(98)1 on family mediation,
- Recommendation Rec(2002)10 on mediation in civil matters,
- Recommendation Rec(99)19 concerning mediation in penal matters,
- Recommendation Rec(2001)9 on alternatives to litigation between administrative authorities and private parties,

and to recommend specific measures for facilitating their effective implementation, thus improving implementation of the mediation principles contained in these recommendations.

4. This document concerns Recommendation Rec(99)19 concerning mediation in penal matters. The three other Recommendations, which concern family mediation, mediation in civil matters and alternatives to litigation between administrative authorities and private parties, require a specific approach and are examined in separate documents.

5. At the first meeting of the Working Group (Strasbourg, 8-10 March 2006), a questionnaire was drawn up to determine member states' awareness of the above Recommendations and the development of mediation in their countries in accordance with the principles contained therein. The questionnaires were sent to 16 representative states.

6. 52 replies were received to the questionnaire from member states and from practitioners and a report was drawn up by Mr Julien LHUILLIER (France), scientific expert, summarising those responses. However, limited information was supplied on mediation in penal matters. Since the adoption of the Recommendation, the concept and scope of mediation in penal matters has developed, and a broader concept of "restorative justice" has emerged, including "victim-offender mediation"[31]. Therefore, it is suggested that further work should be undertaken on updating the Recommendation. Before doing so, it would be necessary to have a fuller evaluation of the impact of restorative justice in member states based on up-to-date and comparable data.

7. As might be expected, there are considerable differences between member states in the way that victim-offender mediation has advanced, particularly because of the following obstacles:

- lack of awareness of restorative justice and mediation,
- lack of availability of victim-offender mediation before and after conviction,
- power to refer parties to mediation limited only to a single criminal justice institution,
- relatively high cost of mediation,
- lack of specialized training and disparities in qualifications of mediators.

[30] The CEPEJ-GT-MED is composed as followed: Ms Nina BETETTO (Slovenia), Ms Ivana BORZOVÁ (Czech Republic), Mr Peter ESCHWEILER (Germany), Ms Maria da Conceição OLIVEIRA (Portugal), Mr Rimantas SIMAITIS – President - (Lithuania), Mr Jeremy TAGG (United Kingdom), Ms Anna WERGENS (Sweden).

[31] See also UN Basic principles on the use of Restorative justice Programmes in Criminal Matters ECOSOC Res 2000/14 and Res 2002/12. The term "offender" which is, for practical reasons, used througout the recommendation and these guidelines would also cover the alleged offender, for example, the accused or any person charged with a criminal offence.

8. In the light of these obstacles and in view of the fact that restorative justice processes may serve as an alternative to conventional justice, and as a tool for conflict management, but also in view of its potential to repair harm and to reduce reoffending, the Working Group has drawn up the following non binding guidelines to help member states to implement the Recommendation concerning mediation in penal matters.

## 1. AVAILABILITY

9. To expand equal availability of mediation services, measures should be taken to promote and set up workable mediation schemes across as wide a geographical area as possible, at all stages of the criminal justice procedure, including the execution of sanctions.

### 1.1 Support of mediation projects by member states

10. Member states should recognise and promote existing as well as new workable mediation schemes by financial and other forms of support. Where successful mediation programmes have been established, member states are encouraged to expand their availability by information, training and supervision.

### 1.2. Role of the judges, prosecutors and other criminal justice authorities

11. Judges, prosecutors and other criminal justice authorities have an important role in the development of mediation. They should be able to give information, arrange information sessions on mediation and, where applicable, invite victims and/or offenders to use mediation and/or refer the case to mediation. Member states are encouraged to establish and/or improve co-operation between criminal justice authorities and mediation services to reach victims and offenders more effectively.

### 1.3. Role of social authorities and non governmental organisations

12. Member states are encouraged to recognise social authorities, victims support organisations and other organisations engaged in the criminal justice system, since they have an important role in promoting restorative justice and mediation. Where applicable, such bodies may invite victims and/or offenders to use mediation. They may for example have a role in conducting mediation, in offering different forms of restorative justice as well as in supporting the parties.

### 1.4. Role of lawyers

13. The codes of conduct for lawyers should include an obligation or a recommendation for lawyers to take steps to provide relevant information and, where appropriate, suggest the use of victim-offender mediation to parties and plead for referral to mediation by the competent authorities.

### 1.5. Quality of mediation schemes

14. It is essential for judges, prosecutors and other criminal justice authorities when referring parties to mediation, for lawyers when advising clients, and for the general public confidence in the mediation process that the quality of mediation is assured.

15. It is important that member states continually monitor their mediation schemes and on-going pilot projects and arrange for their external and independent evaluation. Certain common criteria, including both qualitative and quantitative evaluation aspects, should be developed to enable the quality of mediation schemes to be compared. Legislators and/or criminal justice authorities of member states are encouraged to identify possible consequences of mediation and mediated agreements on criminal procedures.

16. In view of the imbalance of power between the victim and the offender following a crime, member states should be aware that the needs of the victim require special consideration before, during and after the mediation. For this reason, member states are recommended to carry out further research and developments in this matter.

### 1.6. Confidentiality

17. The duty of confidentiality should be binding for the mediator at all stages of the mediation process and after its termination. Whenever this duty is subject to exceptions[32], these exceptions should be clearly defined by legislation.

18. Members States should provide for legal guaranties of confidentiality in mediation. The breach of the confidentiality duty by the mediator should be considered as a serious disciplinary fault and be sanctioned appropriately.

### 1.7. Mediators' qualifications

19. Member states and/or mediation stakeholders should provide adequate training programmes for mediators and, taking into account the disparities in training programmes, set up common standards concerning the training.

20. As a minimum, the following items should be covered in mediation training:
- principles and aims of mediation,
- attitude and ethics of the mediator,
- phases of the mediation process,
- basic knowledge of criminal justice system
- the relationship between criminal justice and mediation,
- indication, structure and course of mediation,
- legal framework of mediation,
- skills and techniques of communication and of work with victims, offenders and others engaged in the mediation process, including basic knowledge on reactions of victims and offenders,
- skills and techniques of mediation,
- adequate amount of role plays and other practical exercises,
- specialist skills for mediation in cases of serious offences and offences involving minors,
- various methods of restorative justice,
- assessment of knowledge and competence of the trainee.

21. This training should be followed by supervision, mentoring and continuing professional development.

22. Member states should recognise the importance of establishing common criteria to permit the accreditation of mediators and/or institutions which offer mediation services and/or who train mediators. Because of the increased mobility throughout Europe, measures should be taken to establish common international criteria for accreditation as, for example, a certificate of European mediator, etc.

23. As certain member states encounter problems where the quality of training of mediators is concerned, national training institutions are recommended to establish links and/or to establish a continuous training programme for mediators and for mediation trainers (for example, a European training centre). This could be facilitated by the Council of Europe in co-operation with the European Union.

### 1.8 Participation and protection of minors

24. Member states should recognise the importance of supporting and protecting minors during their participation in the mediation process by the establishment of adequate safeguards and procedural guarantees.

25. Member states should work together to examine, evaluate, and identify good practices in order to establish specific guidelines to the participation of minors in mediation in penal matters. This could be facilitated by the Council of Europe in co-operation with the European Union.

26. These specific guidelines should include:

a. the relevance of the child's age or mental maturity and its consequences for the involvement of the minor in the mediation procedure;
b. the role of parents, in particular in those situations where parents may oppose participation in mediation;

[32] See in particular Recommendation Rec(99)19 concerning mediation in penal matters, paragraph 30.

c. the involvement of social workers, psychologists and/or legal guardians in mediation when minors are present.

### 1.9. Codes of conduct

27. Member states should take measures to ensure the uniformity in the concepts, scope and guarantees of the main principles of mediation such as confidentiality and others within their countries, by legislative measures and/or by developing codes of conduct for mediators.

28. Having in mind that the European Code of Conduct for Mediators in civil and commercial mediation is gaining general recognition by various mediation stakeholders throughout Europe, it is recommended that a special Code of Conduct shall be elaborated with respect to the particularities of mediation in penal matters.

### 1.10. Breaches of codes of conduct

29. Where mediators breach a code of conduct, member states and mediation stakeholders should have in place appropriate complaints and disciplinary procedures.

### 1.11. International mediation

30. Discharges based on mediated agreements should have the same status as judgments or other judicial decisions, if they are taken by official judicial staff, e.g. member of the office of the public prosecutor or judge. Such a decision will preclude prosecution in respect of the same facts in another member state (ne bis in idem).

## 2. ACCESSIBILITY

### 2. 1. The rights of victims and offenders

31. In order to enable victims and offenders to take part in mediation, members States should take all necessary steps to ensure that their rights are protected and that they are fully aware of their rights. Mediation requires the free and informed consent of both victims and offenders, and should never be used if there is a risk that mediation may disadvantage one of the parties. Due consideration should be given not only to the potential benefits but also to the potential risks of mediation for both parties and in particular for the victim[33].

32. Special effort should therefore be made to ensure that information about victim-offender mediation is clear, complete and timely.
This information should contain:

- the process of the mediation itself;
- the rights and obligations of users;
- the legal effects of mediation.

33. The parties in mediation should, in particular, be fully informed of the possible consequences of the mediation procedure on the judicial decision making procedure. including discontinuation of the criminal procedure, suspension or mitigation of the sanction imposed on the alleged offender. Also, in cases where victims are particularly vulnerable, they should be made aware of the possibility of conducting a mediation without face-to-face contact with the offender.

### 2.4. Cost of the mediation for the users

34. In order to make mediation accessible, member states should ensure direct financial support to mediation services via legal aid and/or other means. Exceptionally, in those member states where the offender has to finance partly his/her participation in mediation, member states should ensure that his/her contribution remains proportionate to his/her income. A costly mediation procedure not covered by legal aid might be an obstacle to mediation.

[33] See Recommendation Rec(2006)8 on assistance to crime victims, item 13.

### 2.5. Suspension of limitation terms

35. In order to make mediation accessible, its use should not be prevented by the risk of expiry of limitation terms. In order to rectify this problem, member states are encouraged to consider implementing provisions for the suspension of limitation terms.

## 3. AWARENESS

36. It appears from the questionnaire responses that lack of awareness about restorative justice among the judiciary, prosecutors and other criminal justice authorities, victim support organisations, legal professionals, victims and offenders and the general public is one of the main obstacles to the development of mediation.

37. In order for the Recommendation on mediation in penal matters to be accessible to policy makers, academics, mediation stakeholders and mediators, it is vital that it is translated and disseminated in the languages of all member states.

38. It is recommended that CEPEJ creates a special page on mediation in its website. It could include translated text of the Recommendation**, i**ts explanatory memorandum and other relevant texts of the Council of Europe concerning mediation, assessment of the impact in countries of the Recommendation on mediation in penal matters. This special page could also include information on the monitoring and evaluation of mediation schemes and mediation pilot projects, list of mediation providers in member states, useful website links, etc.

### 3.1. Awareness of the general public

39. Member states, NGO's and other mediation stakeholders should take appropriate measures to raise awareness of the benefits of the mediation among the general public.

40. Such measures may include:
- Articles/information in the media,
- dissemination of information on mediation via leaflets/booklets, internet, posters,
- mediation telephone helpline,
- information and advice centres,
- focused awareness programmes such as "mediation weeks",
- seminars and conferences,
- open days on mediation at courts and institutions which provide mediation services

41. Member states, universities, other academic institutions and mediation stakeholders should support and promote scientific research in the field of mediation and restorative justice.

42. Mediation and other forms of restorative justice should be included in schools national curricula.

### 3.2. Awareness of the victims and offenders

43. Members of the judiciary, prosecutors, the police, criminal justice authorities, lawyers and other legal professionals, social workers, victims support organisations as well as other bodies involved in restorative justice should provide early information and advice on mediation to the victims and offenders, accentuating the potential benefits and risks to both.

### 3.3. Awareness of the police

44. Since the police intervene during the early stages of a case, and are therefore the first to be in contact with the victims and offenders, their training should include an understanding of restorative justice. Specific consideration should be given to the matter of referring cases to mediation. This could be achieved by training including information on perpetrators and victims, as well as through the distribution of leaflets/brochures.

### 3.4. Awareness of the judiciary and prosecutors

45. An increasing number of member states have adopted legislative measures to allow judges and prosecutors, on an equal footing, to invite victims and/or offenders to use mediation and/or refer the case to mediation. For this reason, these two bodies should be fully informed of the mediation procedure and

conscious of its advantages and possible risks. This could be achieved via information sessions and initial and continuous training programmes.

46. It is important to foster both institutional and individual links between mediators and judges/prosecutors. This can be done in particular by conferences and seminars.

### 3.5. Awareness of the lawyers

47. Restorative justice and mediation should be included in the curricula of initial as well as continuous training programmes for lawyers.

48. Bar associations and lawyers associations should have lists of mediation programmes providers and disseminate them to lawyers.

49. Members States and Bar associations should take measures to create legal fee structures that do not discourage lawyers from advising clients to use mediation in settling disputes.

### 3.6. Awareness of social workers

50. Member states are encouraged to take measures to raise the awareness of social workers to restorative justice and mediation.

## Guidelines for a better implementation of the existing Council of Europe's recommendation on enforcement

### INTRODUCTION

### Methodology

1. At the Council of Europe's Third Summit (Warsaw, May 2005), the Heads of State and Government undertook to "*make full use of the Council of Europe's standard-setting potential and promote implementation and further development of the Organisation's legal instruments and mechanisms of legal co-operation*". At this summit, it was decided to "*help member states to deliver justice fairly and rapidly*".

2. As the Secretary General of the Council of Europe underlined already in October 2005, the enforcement of judicial decisions is an essential element in the functioning of a state based on the rule of law. It constitutes a serious challenge both at national and European level (CM/Monitor(2005)2 of 14 October 2005).

3. This statement, as confirmed by the relevant case-law of the European Court of Human Rights (ECtHR), and problems in the enforcement of its judgments, as well as the work of the CEPEJ, inclined the Committee of Ministers to dedicate a monitoring process to the enforcement of national judicial decisions. CEPEJ has also taken into account important developments in the case law of ECtHR since the drafting of Recommendation Rec(2003)17 of the Committee of Ministers to member states on enforcement.

4. The CEPEJ, whose statute includes the objective of facilitating the implementation of the Council of Europe's international legal instruments concerning efficiency and fairness of justice, included enforcement of judicial decisions into the list of its priorities[34]. As a first step, the CEPEJ commissioned an in-depth study relating to the issues of enforcement in member states, in order to gain a better understanding of how this works and to facilitate the application in practice of the relevant Council of Europe standards and instruments. The study, carried out by the legal scholars of the University of Nancy (France) and the Swiss Institute of Comparative Law (Lausanne)[35], proposed a set of guidelines intended to facilitate the application of the principles contained in the Council of Europe recommendations[36].

5. As a second step, the CEPEJ created a working group on enforcement of judicial decisions (CEPEJ GT-EXE)[37], in charge of elaborating Guidelines for effective application of the existing Council of Europe standards. On the basis of the proposals made in the In-Depth Study, each member of the Working group drafted a paper addressing a definite set of issues relating to the future Guidelines. The CEPEJ then mandated a scientific expert, M. Julien LHUILLIER (France), to carry out the synthesis of the elaborated briefs.

### Principles and Objectives of Enforcement

6. For the rule of law to be maintained and for court users to have confidence in the court system, there needs to be effective but fair enforcement processes. However, enforcement may only be achieved where the defendant has the means or ability to satisfy the judgment.

[34] In this context it noted the important number of cases brought before the ECtHR highlighting different enforcement problems in a number of countries, in particular in civil cases against the state or state enterprises, and the complexity of the remedial actions required, involving e.g. simplifications of enforcement procedures, improvement of budgetary procedures and internal control, improving possibilities of freezing or seizing accounts or other assets of defaulting authorities or companies, the functioning of enforcement services. Many of these problems are followed in the context of the Committee of Ministers supervision of the execution of the ECtHR's judgments.

[35] J. LHUILLIER, D. LHUILLIER-SOLENIK, G. NUCERA, J. PASSALACQUA, *Enforcement of Court decisions in Europe*, CEPEJ Studies n°8, Council of Europe, 2008, 140 p.

[36] Recommendation Rec(2003)16 of the Committee of Ministers to member states on the execution of administrative and judicial decisions in the field of administrative law; Recommendation Rec(2003)17 of the Committee of Ministers to member states on enforcement.

[37] The CEPEJ GT-EXE is composed as followed: Mr Andrei ABRAMOV (Russia), Mr Karl-Heinz BRUNNER (Germany), Mr Fokion GEORGAKOPOULOS (Greece), Mr Geert LANKHORST (the Netherlands), Ms Ana LOVRINOV (Croatia), Mr John Marston (United Kingdom). The following have also attended the meetings of the Group: Mr John STACEY (United Kingdom) and Mr Georg STAWA (Austria) for the CEPEJ and Mr Léo NETTEN and Mr Mathieu CHARDON for the international Union of Judicial Officers (UIHJ).

7. Enforcement should strike a balance between the needs of the claimant and the rights of the defendant. Member states are encouraged to monitor enforcement procedures, control court management and take appropriate actions to ensure procedural equality of the parties.

8. The enforcement process should be sufficiently flexible so as to allow the enforcement agent a reasonable measure of latitude to make arrangements with the defendant, where there is a consensus between the claimant and the defendant. Such arrangements should be subject to thorough control to ensure the enforcement agent's impartiality and the protection of the claimant's and third parties' interests. The enforcement agent's role should be clearly defined by national law (for example their degree of autonomy). They can (for example) have the role of a "post judicial mediator" during the enforcement stage.

**Court Processes**

9. Member states should take measures to ensure that information is available on the enforcement process and there is transparency of the activities of the court and those of the enforcement agent at all stages of the process, provided that the rights of the parties are safeguarded.

10. Notwithstanding the role of the court in the enforcement process, there should be effective communication between the court, the enforcement agent, the claimant, and the defendant. All the stakeholders should have access to information on the ongoing procedures and their progress.

11. Member states should provide the potential parties to enforcement procedures with information on the efficiency of the enforcement services and procedures, by establishing performance indicators against specified targets and by indicating the time different procedures might take.

12. Each authority should provide for the adequate supervision (having regard to any relevant case law of the EctHR) of the enforcement process and should bear responsibility for the effectiveness of the service. Accountability may be achieved by management reports and/or customer feedback. Any reports should allow for verification that the judgment has been executed or (if not) that genuine efforts have been made within a reasonable time whilst respecting the equality of the parties.

## I. PREPARATION OF ENFORCEMENT

### 1. Accessibility of enforcement services

#### 1.1. Distribution of enforcement services

13. The geographical distribution of enforcement agents within a country should ensure the widest possible coverage for all potential parties. Within a single member state, when different authorities are tasked with taking action in different areas of enforcement (i.e. the judge responsible for enforcement and treasury officials), it is important to pay close attention to the distribution, both geographical and case-type, of all the authorities concerned. Every part of the jurisdiction should have adequate coverage for each type of enforcement activity.

14. Where enforcement agents carry on their profession as a private practice, member states should ensure that there is sufficient competition and clearly defined geographical competence.

#### 1.2. Language Used

15. Measures should be taken to ensure that the parties are able to understand the process of enforcement in which they are involved, and, where possible, have the option of participating in the proceedings without the need for legal representation. To this effect, the enforcement processes and legislation should be rendered as clear and comprehensible as possible (i.e. by creating plain-language versions of legislation, enforcement handbooks, by reducing the time of contact the parties need to have with the court both in person and by correspondence, etc.).

#### 1.3. Availability of stakeholders involved in the enforcement procedure

16. All of the stakeholders that are likely to be involved in enforcement processes (police, experts, translators, interpreters, local authorities, risk insurers, child care experts, etc.) should have sufficient legal status to help the enforcement agent and should be promptly available, in case their help is necessary for the enforcement of a judgment. Social workers should be particularly available in cases where children or other vulnerable persons are concerned by the enforcement procedure.

## 2. Notices to parties and third parties

17. Notices to parties concerning the enforcement of judicial decisions or enforceable titles or notarised or other documents are an essential aspect of the law of enforcement. Due notification of parties is a necessary element of a fair trial, in the sense of Article 6.1 of the European Convention on Human Rights.

18. The member states may draw up standard documents to notify parties. These standard documents could relate to the different stages in the enforcement process and to any possible remedies allowing enforcement to be challenged. They could have the following purposes:

- notifying the defendants of the consequences of enforcement (including the cost of enforcement) and of the costs of a failure to comply with a decision ordering them to pay;

- notifying the defendants of the enforcement measures to be taken against them, as they are implemented, so as to enable the defendant to comply with or, where applicable, challenge each measure;

- keeping the claimants fully informed of the stages reached by the enforcement procedure;

- notifying the third parties to ensure, firstly, that their rights are upheld and, secondly, that they are able to fulfil any obligations incumbent on them and to be aware of the consequences of a failure to comply.

19. Notification in all cases should encourage the defendant to comply with the court order voluntarily and include a warning that in case of non-compliance enforcement measures could be used, including, if appropriate, further costs may be applied.

20. It should be possible to entrust enforcement agents with the service of notices. To this end, member states should determine conditions for a secure method for the service of documents.

21. Where notices generate rights or obligations, it is the duty of the enforcement agent to ensure that the parties are served with adequate notice in a timely manner.

22. Where the defendant's assets are to be sold at a public auction following their seizure, potential buyers should be notified in advance by efficient means of communication, guaranteeing rapid dissemination of information to the broadest possible public, while safeguarding the defendant's privacy. Member states should propose minimum dissemination standards taking account of the nature of assets, their estimated value and the date of sale.

## 3. Enforceable Title: Definition and form of the title

23. National legislative framework should contain a clear definition of what is considered an enforceable title and the conditions of its enforceability.

24. Enforcement titles should be drafted in clear and comprehensible way, leaving no opportunity for misinterpretation.

## 4. Enforcement agents

### 4.1. Qualification requirements

25. For the fair administration of justice, it is important that the quality of enforcement should be guaranteed. Member states should accredit enforcement agents only if the candidates concerned are of a standard and training commensurate with the complexity of their tasks. A high quality of training of professionals is important for the service of justice and to increase the trust of users in their justice system.

26. Enforcement agents should also be required to follow compulsory continuous training.

27. It is recommended that links be forged between national training institutions. Member states should ensure that enforcement agents are given appropriate training curricula and should set down common minimum standards for instructors in the different member states[38].

[38] The CEPEJ could be tasked with setting up a working group on training on enforcement, comprising practitioners, instructors and representatives of member states or international organisations.

28. Initial and continuous training could encompass:

- the principles and objectives of enforcement;
- professional conduct and ethics;
- stages in the enforcement process;
- the appropriateness, organisation and implementation of enforcement measures;
- the legal framework;
- role-playing and practical exercises as appropriate;
- assessment of trainees' knowledge;
- international enforcement of judicial decisions and other enforceable titles.

### 4.2. Organisation of the profession and enforcement agent's status

29. With a view to good administration of justice, it is desirable that enforcement agents should be organized in a professional body representing all members of the profession, thereby facilitating their collective representation and the gathering of information.

30. Within the member states which have established professional organisations of enforcement agents, membership of this representative body should be compulsory.

31. Enforcement agents' status should be clearly defined so as to offer potential parties to enforcement procedures a professional who is impartial, qualified, accountable, available, motivated and efficient.

32. Where enforcement agents are state employees, they should enjoy appropriate working conditions and sufficient human and material resources. For example, enabling staff to work with access to functioning modern communication and IT equipment (computers, telephones, fax machines, Internet connections, job-specific upgradeable IT systems) and with appropriate means of transport sufficient to allow them to perform their role as effectively as possible.

### 4.3. Rights and obligations

33. Enforcement agents, as defined by a country's law, should be responsible for the conduct of enforcement within their competences as defined by national law. Member states should consider giving enforcement agents sole competence for:

- enforcement of judicial decisions and other enforceable titles or documents, and
- implementation of all the enforcement procedures provided for by the law of the state in which they operate.

34. Enforcement agents may also be authorized to perform secondary activities compatible with their role, tending to safeguard and secure recognition of parties' rights and aimed at expediting the judicial process or reducing the workload of the courts. These may be, among others:

- debt recovery;
- voluntary sale of moveable or immoveable property at public auction;
- seizure of goods;
- recording and reporting of evidence;
- serving as court ushers;
- provision of legal advice;
- bankruptcy procedures;
- performing tasks assigned to them by the courts;
- representing parties in the courts;
- drawing up private deeds and documents;
- teaching.

35. Enforcement agents should be obliged to perform their role whenever they are legally required to do so except in cases of impediment or where they are related by blood or marriage to a party. Enforcement agents should be precluded from being assigned disputed rights or actions in cases with which they are dealing.

36. Where enforcement agents are independent professionals, they should be obliged to open a non-attachable account specifically intended for depositing funds collected on behalf of clients. This account should be subject to inspection. They should also be required to take out professional and civil liability insurance. Enforcement agents should benefit from social insurance cover.

### 4.4. Remuneration

37. Where enforcement agents are state employees, the state should ensure that they receive appropriate remuneration, particularly in the light of their level of training, experience and the difficulties inherent in their task.

### 4.5. Ethics and professional conduct

38. Enforcement agents should be subject to clearly stated rules of ethics and conduct, which could be set out in professional codes of conduct. These codes of conduct should *inter alia* contain professional standards regarding:

- information to be given to parties by enforcement agents concerning the enforcement procedure (grounds of action, transparency and clarity of costs, etc.)
- the rules governing the formulation of notices to parties (enforcement agents' social role, duty of advice, etc.)
- professional ethics (behaviour, professional secrecy, ethical criteria governing the choice of actions, etc.)
- smooth enforcement (predictability and proportionality of costs and lead-times, co-operation between enforcement services, etc.)
- procedural flexibility (autonomy of enforcement agents, etc.)

## II. REALISATION OF ENFORCEMENT

### 1. Information about defendants and assets

### 1.1. Information accessible to the claimant

39. In order to ensure the claimant's right to adequate assistance to the enforcement proceedings, the latter should be allowed to access public registers so that they can confirm essential information about the defendant, such as information identifying the defendant and his whereabouts for enforcement purposes and the data accessible through public registers (i.e. land registers, court registers of companies, etc.) subject to the freedom of information and data protections laws of the national state.

The aforementioned data should be available to the claimant upon a written request and upon production of sufficient proof of interest (i.e. judgment or another enforceable title).

### 1.2. Information accessible to the enforcement agent

40. So that enforcement agents may produce an estimate of costs and ensure that any measures taken are proportionate to those costs, member states should allow them speedy and preferably direct access to information on the defendant's assets. Member states are encouraged to consider making such information available to the enforcement agent by Internet through a secured access, if possible.

41. In order to prevent the defendants from avoiding enforcement by relocating their assets, member states are encouraged to establish a unique multi-source restricted access database about debtor' attachable assets (i.e. ownership rights over a vehicle, real estate rights, payable debts, tax returns, etc.). Member states should provide the database with an acceptable level of security, with respect to the risks incurred. Access of the enforcement agent to the database should be restricted to that data pertaining to the pending enforcement procedure and be subject to thorough control. Member states should provide the defendants with effective legal means to ensure that any inquiry about their personal assets is justified.

42. Co-operation between the various organs of state and private institutions, subject to compliance with the data protection legislation, is essential for enabling a speedy access to the multiple-source

information on defendants' assets. Protocols and uniform procedures should be drawn up to ensure inter-departmental co-operation, on one hand, and cooperation between these departments and enforcement services, on the other hand.

### 1.3. The duty to provide information

43. All state bodies, which administer databases with information required for efficient enforcement, should have a duty to provide the information to the enforcement agent, within an agreed time-limit if such information is compatible with data protection legislation.

### 1.4. Data protection

44. It is recommended that national legislation on personal data protection should be scrutinized in case it needs to be adapted to allow for efficient enforcement procedures.

45. Enforcement agents must bear a responsibility for maintaining confidentiality when secret, confidential or sensitive information comes to their attention in the course of enforcement proceedings. In case of a breach of this duty, measures of disciplinary liability should be applicable, along with civil and criminal sanctions.

### 1.5. Multiple use of information

46. Member states are invited to consider allowing enforcement agents to reuse information on the defendant's assets in subsequent procedures that involve the same defendant. The reuse of information should, however, be subject to a clear and precise legal framework (i.e. setting strict timeframes for data retention, etc.).

## 2. Costs of enforcement

### 2.1. Regulation of costs

47. Each member state is encouraged to introduce regulations governing the level of enforcement costs to ensure effective access to justice notably through legal aid or schemes allowing for the waiver of costs or a postponement of their payment, where such costs are likely to fall to the parties. The parties should be protected to ensure that they will pay only the costs determined by law.

48. Where, within the same member state, there are enforcement agents working in both the private and public sector, the state should avoid any discrimination in terms of the costs for the debtor between enforcement agents of different status but equal competence.

49. Member states should introduce a procedure whereby parties may challenge the costs of the enforcement agents.

### 2.2. Transparency of enforcement costs

50. Where enforcement costs are likely to fall to the parties, the member states should ensure that the latter are informed as fully as possible about the enforcement costs (enforcement fees and the performance fees due upon successful completion). This information should be made available to the parties not only by the enforcement agent but also by the courts, consumer organisations, procedural codes or via the official Internet sites of the judicial and professional authorities.

51. In recognition of the growing mobility of persons and services in Europe, there is an increasing need for international enforcement of court decisions. The transparency of enforcement costs should therefore go beyond mere domestic level: member states should agree to set up a data base of the amounts charged for the procedural acts most frequently performed and make it as broadly available as possible, with the aim of giving persons in other member states access to each country's structure of charges[39].

[39] Under the auspices of the Council of Europe and possibly in conjunction with other international organisations, the CEPEJ could be tasked with identifying the data to be collected.

### 2.3. Clarity and predictability of enforcement fees

52. Enforcement fees should be public. Member states are encouraged to require that any procedural document clearly indicate the amount of the action and provide for sanctions in the event of non-compliance (i.e. invalidity of documents failing to comply with the requirement, etc).

53. Where the defendant's financial situation is known to the enforcement agent and he recommends a particular enforcement process he should inform the claimant about the type of action envisaged and the likely resulting costs at the beginning of and at each stage in the procedure.

54. The clarity of fees is a factor in the transparency of enforcement costs. In order to be as intelligible as possible, the fee for an action should depend on a limited number of factors. The fee should be set out in the regulation as simply, clearly and concisely as possible.

55. When setting enforcement fee tariffs, member states should exchange their experiences and consider the need to take certain factors into account, such as the amount of the debt, any particular urgency and the difficulties that the enforcement agent is likely to encounter.

### 2.4. Relevance of taking action

56. The ultimate cost of enforcement should be in due proportion to the remedy sought. Member states should endeavour to provide an effective enforcement procedure for all level of debts, either large or small.

57. It is the responsibility of the enforcement agent to take all reasonable and necessary steps in enforcement and to decide which enforcement action is most appropriate. Where costs are considered irrelevant or wrongfully incurred, these costs should be borne by the enforcement agent.

58. Member states which grant legal aid should verify the relevance of the costs incurred, so that the community does not have to bear unjustified costs.

59. Where an enforcement agent has a duty to offer proper advice, he/she should be required to explain clearly to claimants their situation and the relevance of the action they suggest be taken.

### 2.5. Allocation of enforcement costs

60. Enforcement fees should be borne by defendants, where he or she is solvent, together with the possibility of a performance fee borne by the claimant. Where the defendant is insolvent, the enforcement fees should be paid by the claimant.

61. Where enforcement is deemed to be wrongful or irregular, liability for the costs should be borne by the persons or the bodies responsible for the wrongful or irregular act.

### 2.6. Legal aid

62. In order to guarantee access to justice, legal aid schemes, or alternative funding schemes, should be available to claimants who are unable to pay enforcement fees (i.e. by means of state funding or by remitting the fees). Where legal aid is granted, the state may, if considered just, avail itself with mechanisms allowing it to recover its outlay from the proceeds of enforcement.

## 3. Timeframes and reports

### 3.1. Timeframes for enforcement procedures

#### 3.1.1. Reasonable and foreseeable time limits

63. The time lines for enforcement procedures should be reasonable and member states should not impose any arbitrary cut-off deadlines for enforcement to end.

64. Member state should set forth clear and precise criteria regarding the reasonable nature of the duration, which could vary according to the nature of the case and the type of action requested.

65. In view of the importance of being able to foresee the length of enforcement proceedings from the point of view of legal certainty, member states should consider establishing publicly accessible statistical

databases enabling the parties to calculate the likely duration of the different enforcement measures possible in domestic legislation (i.e. attachment of salary, attachment of bank assets, and attachment of vehicle). The databases should be compiled in collaboration with enforcement professionals and should be made as broadly available as possible, with the aim of giving persons in other member states access to each country's structure of duration so comparisons can be made.

### 3.1.2. Factors of smooth and prompt enforcement

66. At the stage of the enforcement of decisions, swift (such as e-mail) communication between the court, the enforcement agents and the parties should be possible.

67. Member states should ensure that the legal framework of enforcement is not unnecessarily prolonged. Member states are encouraged in particular to take measures to ease the procedural enforcement framework to give enforcement agents the necessary autonomy to choose for themselves, without prior authorisation, the procedural steps that are the most appropriate for the case in question.

68. Member states should also ensure that the defendant can take action to challenge enforcement measures within a reasonable timeframe, provided this does not unjustifiably halt or delay the enforcement proceedings; for example where a defendant wishes to appeal a decision, machinery should be in place to allow him to provide security for the protection of the claimant.

69. Member states should provide for an accelerated and emergency enforcement procedure in cases where a delay could result in an irreversible damage (i.e. cases within the province of a family court, cases of defendant absconding, eviction, deterioration of assets, etc.).

70. Priority should always be given to reaching agreement between the parties in order to coordinate enforcement timeframes. Where the parties agree between themselves a timeframe for enforcement then any procedures put in place by the member state should not preclude these agreements from taking effect.

71. The defendant's allegations of misconduct against an enforcement agent should not hamper or delay the enforcement process except where there is judicial intervention. Complaints against enforcement agent should be investigated simultaneously with the enforcement proceedings.

## 3.2. Reporting on enforcement procedures

### 3.2.1. Reporting on each enforcement measure

72. The defendant should be informed as to the extent of his liability during the enforcement process.

### 3.2.2. Reporting on completed enforcement procedure

73. Once the claimant's interests are satisfied, this information should be communicated to the claimant. Member states are encouraged to establish clear regulations governing the obligation to report pending and/or completed enforcement procedures (e.g. by the way of a public register where the outcomes of enforcement actions against individual defendants are recorded).

### 3.2.3. European standards on information

74. Member states are strongly encouraged to draw up together European quality standards regarding the information that needs to be provided to the parties and to the general public with respect to enforcement procedures[40].

# III. Supervision, control and disciplinary procedures

## 1. Quality control of the enforcement proceedings

75. In order to undertake quality control of enforcement proceedings, each member state should establish European quality standards/criteria aiming at assessing annually, through an independent review system and random on-site inspection, the efficiency of the enforcement services. Among these standards, there should be:

[40] Cf. Council of Europe Convention on Access to Official Documents (CETS No. 205 – opened to signature in June 2009 but not yet in force).

a. clear legal framework of the enforcement proceedings establishing the powers, rights and responsibilities of the parties and third parties;
b. rapidity, effectiveness and reasonable cost of the proceedings;
c. respect of all human rights (human dignity, by not depriving the defendant of a minimum standard of mere economic subsistence and by not interfering disproportionally with third parties' rights, etc.);
d. compliance with a defined procedure and methods (namely availability of legal remedies to be submitted to a court within the meaning of Article 6 of the ECHR);
e. processes which should be documented;
f. form and content of the documents which should be standardised;
g. data collection and setting-up of a national statistic system, by taking into account, if possible, the CEPEJ Evaluation Scheme and key data of justice defined by the CEPEJ;
h. competences of enforcement agents;
i. performances of enforcement agents;
j. the procedure, on an annual basis:
    - the number of pending cases;
    - the number of incoming cases;
    - the number of executed cases;
    - the clearance rate;
    - the time taken to complete the enforcement;
    - the success rates (recovery of debts, successful evictions, remittance of amounts outstanding, etc.);
    - the services rendered in the course of the enforcement (attempts at enforcement, time input, decrees, etc.);
    - the enforcement costs incurred and how they are covered;
    - the number of complaints and remedies in relation to the number of cases settled.

76. The performance data should be based on representative samples and should be published.

77. These assessment criteria could be defined at a European level, in order to strengthen confidence between member states, particularly given the prospect of a growing number of international enforcement cases[41].

### 2. Supervision and control of enforcement activities

78. The authorities responsible for supervision and/or control of enforcement agents have an important role in also guaranteeing the quality of enforcement services. The member states should ensure that their enforcement activities are assessed on an ongoing basis. This assessment should be performed by a body external to the enforcement authorities (for example, by a professional body). The member states' authorities should clearly determine the control procedures to be performed during inspections.

79. Member states should ensure that the arrangement for monitoring the activities of enforcement agents does not hamper the smooth running of their work.

### 3. Disciplinary procedures and sanctions

80. Breaches of laws, regulations or rules of ethics committed by enforcement agents, even outside the scope of their professional activities, should expose them to disciplinary sanctions, without prejudice to eventual civil and criminal sanctions.

81. Disciplinary procedures should be carried out by an independent authority. Member states should consider introducing a system for the prior filtering of cases which are filed merely as delaying tactics.

82. An explicit list of sanctions should be drawn up, setting out a scale of disciplinary measures according to the seriousness of the offence. Disbarment or "striking off" should concern only the most serious offences (the principle of proportionality between the breach and the sanction should be observed).

[41] The Council of Europe, if possible in conjunction with the European Union, could help to this task.

**GLOSSARY**

For the purposes of these Guidelines, the following terms should be understood as follows:

***Enforcement***: the putting into effect of court decisions, and also other judicial or non-judicial enforceable titles in compliance with the law which compels the defendant to do, to refrain from doing or to pay what has been adjudged (source: Recommendation Rec(2003) 17 of the Committee of Ministers to member states on enforcement).

***Claimant***: A party seeking enforcement. In civil cases, the claimant is usually a creditor, but the two terms are not synonymous as the claimant may equally well seek the enforcement of an "obligation to do" or "to refrain from doing".

***Clarity of enforcement fees***: Enforcement fees should be set out simply, clearly and concisely. Clarity of enforcement fees is an indicator of the transparency of enforcement costs (q.v.).

***Control of activities***: Control of activities means control of the lawfulness of the actions carried out by the enforcement agents. It may be carried out *a priori* (before the enforcement agents act) or *a posteriori* (after the enforcement agent acts) by a "disciplinary" authority (See supervision of activities).

***Defendant***: A party against whom enforcement is sought (source: Recommendation Rec (2003) 17 of the Committee of Ministers to member states on enforcement). In civil cases, the defendant is usually a debtor, but the two terms are not synonymous (see Claimant).

***Enforcement agent***: A person authorised by the state to carry out the enforcement process (source: Recommendation Rec (2003) 17 of the Committee of Ministers to member states on enforcement).

***Enforced case***: In order to be enforced, the case must have been the subject of an action that has fully satisfied the claimant (in a civil case).

***Enforcement costs***: Enforcement costs consist of the enforcement expenses (= enforcement fees) and any performance bonus (= performance fees) paid by the claimant to the enforcement agent in the form of fees (See enforcement fees and performance fees).

***Enforcement Fees***: The expenses of the process itself, in other words, the total of the amounts for each action undertaken by the enforcement agent in the course of a single case (see Enforcement costs).

***Enforcement services***: All the professions performing the task of enforcement.

***Enforcement timeframe***: In theory, the period of action or waiting between the beginning and the completion of the enforcement process. In practice, it is the sum of the periods necessary for the completion of all the actions carried out by the enforcement agent.

***Flexibility of enforcement***: The nature of a system of enforcement that enables the agent to choose the procedural framework that is most appropriate to the features of a case. Flexibility of enforcement is closely connected with the autonomy of the enforcement agent (see Smooth enforcement).

***Foreseeable time limits***: In theory, the time within which the user is informed that the enforcement process should be completed. In practice, this time is often limited to the time necessary for the completion of the next enforcement measure.

***Performance fees***: The sum payable by the claimant to the enforcement agent in the event of satisfaction. Under the legislation of different countries fees may be negotiated, set in advance or prohibited (See Enforcement costs).

***Predictability of enforcement costs***: In theory, expenses of which the user is informed by the enforcement agent, usually corresponding to the expenses of the whole enforcement process. In practice, predictability is often limited to the expense necessary for the completion of the next enforcement measure. Predictability of expenses should not be confused with transparency (q.v.).

***Quality*** (*norms of or standards of*): Quantitative or qualitative criteria making it possible to identify and/or supervise compliance with the minimum requirement of satisfactory enforcement.

***Relevance of taking action***: Relevance of taking action is the assessment of the appropriateness of starting an enforcement process. It is assessed differently by the claimant and the enforcement agent. It is an indicator of the predictability of enforcement costs (q.v.).

***Stakeholders***: persons indirectly involved in the enforcement procedure.

***Smooth enforcement***: Enforcement within a reasonable time with no administrative obstacles or unjustified periods of inactivity; this concept is based not only on the promptness of performance of actions, but also on promptness between the various actions. Flexibility of action (q.v.) is therefore a factor in smooth enforcement.

***Supervision of activities***: Supervision of activities means the process whereby an authority makes observations to the enforcement agent on his or her working methods (scheduling problems, lack of courtesy, etc.); it is a sort of simplified control that does not involve actual examination of a complaint, but the aim of which is to guarantee fair administration of justice (see Control of activities).

***Third party***: Neither claimant, nor defendant in the procedure.

***Transparency of enforcement costs***: Information about enforcement costs should be easily accessible. Transparency is an indicator of the relevance of taking action (q.v.) and should not be confused with predictability (q.v.).

Through these guidelines, CEPEJ provides practical tools to professionals of justice to improve procedural delays, time management in the courts of European states and more generally, quality of service offered to users. These tools, also relating to access to justice, execution of court decisions, e-justice, mediation, propose measures to help improving their daily functioning of European Justice

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